ISSN 0251-1894

2009/1

land reform

LAND SETTLEMENT AND COOPERATIVES

réforme agraire

COLONISATION ET COOPÉRATIVES AGRICOLES

reforma agraria

COLONIZACIÓN Y COOPERATIVAS

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ISSN 0251-1894

Editor/Rédacteur/Redactor en Jefe
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Editing, design, graphics and desktop publishing/Rédaction, mise en page, graphiques et édition électronique/Redacción, compaginación, elaboración gráfica y composición electrónica: **Electronic Publishing Policy and Support Branch, FAO Communication Division/Sous-division des politiques et de l'appui en matière de publications électroniques, Division de la communication/Subdivisión de Políticas y Apoyo en Materia de Publicación Electrónica / División de Comunicación de la FAO**
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Le présent bulletin a pour but de fournir des renseignements et de faire connaître des opinions sur la réforme agraire et les questions connexes à l'Organisation des Nations Unies, aux États Membres de la FAO, ainsi qu'aux experts et institutions nationaux et internationaux. Les articles paraissent dans la langue originale (en français, anglais ou espagnol).

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Preface

Almost all societies acknowledge the concept of state or public landownership in which property rights are vested in a public body on a national, regional or community level. State and public land tenure arrangements define rules for the distribution, use and protection of publicly vested lands. State lands may be used to deliver public services. Authorities or customary rulers may act as custodians of common property resources or of environmentally or culturally sensitive sites on behalf of society. Many forms of public tenure arrangements have been introduced. They commonly differ from private arrangements by limiting access, use and alienation of public lands.

Despite the growing recognition of the importance of state lands and their proper management, public land and property assets are generally weakly managed. Considered as "free" and available, state lands are commonly encroached upon, overutilized and acquired for personal gain. Undefined tenure arrangements and poor recording of land rights contribute to the poor and ineffective management of public lands, providing fertile ground for corrupt practices. The situation is made more serious by weak governance, which is common in land administration institutions. There are no simple solutions for improvement. However, progress has been made by improving transparency, consistency, impartiality and equity in land administration institutions and by enhancing their technical competences and clarifying their management objectives, i.e. by improving the governance of state and public lands.

Through its ongoing normative work on state/public-sector land management, FAO's Land Tenure and Management Unit aims to support governments and other parties in addressing current challenges by providing guidelines, policy recommendations and examples of good practice. The objective is to raise global awareness of persisting problems and of their impacts on the efficient use of and equitable access to land. FAO will publish a new Land Tenure Series guide on state and public land management later this year.

The articles in this issue complement an international seminar on state and public sector land management organized by the International Federation of Surveyors (FIG) and FAO in Verona, Italy, in September 2008. This issue opens with a scene-setting paper by Jennifer Franco expressing the need for a pro-poor policy on public lands. The following articles consist of case studies from various geographical settings. They present different initiatives aimed at improving and strengthening public land management and the governance of public properties. In Ghana, past military rulers expropriated private land without paying compensation and Odame Larbi's paper discusses how this could be rectified. Babu Ram Acharya stresses the importance of appropriate legal, policy and governance frameworks to preserving and managing public land resources in Nepal. Daniel Roberge presents the new public land cadastre developed for Quebec, Canada. Exploring the context of privatization and restitution, Simon Keith, Kiril Georgievski and Kristina Mlitic identify options for more effective state land management in the rural areas of The former Yugoslav Republic of Macedonia. Finally, Richard Grover looks at how public management and the introduction of accruals accounting are changing the delivery of public services and the management of operational property in the United Kingdom.

Paul Munro-Faure
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Préface

Presque toutes les sociétés reconnaissent le concept de propriété foncière domaniale ou publique au titre de laquelle les droits de propriété sont détenus par une entité publique à l'échelon national, régional ou local. Les dispositions du régime foncier domanial et public définissent les règles relatives à la distribution, l'utilisation et la protection des terres relevant du domaine public. Ces terres domaniales peuvent être utilisées pour la prestation de services publics. Les autorités publiques ou les chefs coutumiers peuvent jouer le rôle de gardiens de ressources de propriété commune ou de sites sensibles sur le plan environnemental ou culturel, et ce au nom de la société. Les dispositions du régime foncier public sont nombreuses et variées. Elles se distinguent habituellement de celles du régime privé par des limitations imposées à l'accès, l'utilisation et l'aliénation des terres publiques.

Alors même que l'importance des terres domaniales et la nécessité de gérer correctement ce capital sont de plus en plus reconnues, les terres et les actifs fonciers publics sont généralement négligés. Considérées comme des biens «gratuits» et disponibles, les terres du domaine public sont souvent usurpées, sur-utilisées et acquises à des fins de gain personnel. L'imprécision des régimes fonciers et la mauvaise tenue des registres de droits fonciers entraînent une gestion médiocre et inefficace des terres domaniales et sont le terreau de la corruption. La faiblesse de la gouvernance, monnaie courante dans les institutions chargées de l'administration des terres, vient aggraver la situation. Il n'existe pas de solution simple pour améliorer les choses. Cependant, des progrès ont été enregistrés en renforçant la transparence, la cohérence, l'impartialité et l'équité dans les institutions chargées de l'administration des terres, ainsi qu'en améliorant leurs compétences techniques et en précisant leurs objectifs de gestion, en d'autres termes en améliorant la gouvernance des terres relevant du domaine public.

Par le biais de ses activités normatives suivies dans le domaine de la gestion des terres du secteur public, l'Unité de la gestion des terres et des régimes fonciers de la FAO s'efforce d'aider les gouvernements et les autres acteurs à relever les défis actuels en leur fournissant des directives, des recommandations de politique générale et des exemples de bonnes pratiques. L'objectif est d'élargir la prise de conscience mondiale des problèmes persistants et de leur impact sur l'utilisation efficace des terres et l'accès équitable à ces dernières. D'ici à la fin de l'année, la FAO publiera un nouveau guide de la Série Régime foncier consacré à la gestion des terres domaniales et publiques.

Les articles du présent numéro viennent compléter un séminaire international sur la gestion des terres domaniales et publiques organisé par la Fédération internationale des Géomètres (FIG) et la FAO en septembre 2008 à Vérone (Italie). Dans le premier article de ce numéro, Jennifer Franco plante le décor en évoquant la nécessité de mettre en place une politique relative aux terres publiques qui soit axée sur les pauvres. Les articles suivants sont des études de cas provenant de divers contextes géographiques. Ils présentent différentes initiatives visant à améliorer et à renforcer la gestion des terres publiques et la gouvernance des biens publics. Au Ghana, par le passé, les chefs militaires ont exproprié des propriétaires terriens privés sans leur verser aucune compensation et, dans son article, Odame Larbi explique comment cette situation pourrait être rectifiée. Babu Ram Acharya souligne l'importance de disposer de cadres juridiques, politiques et de gouvernance appropriés afin de préserver et de gérer les ressources foncières publiques du Népal. Daniel Roberge présente le nouveau cadastre mis en place au Québec (Canada) pour les terres domaniales. En explorant le contexte de la privatisation et de la restitution, Simon Keith, Kiril Georgievski et Kristina Mlitic présentent différentes options pour une

gestion des terres domaniales plus efficace dans les zones rurales de l'ex-République yougoslave de Macédoine. Enfin, Richard Grover examine la façon dont la gestion publique et l'introduction de la comptabilité d'exercice modifient la fourniture des services publics et la gestion opérationnelle du système foncier au Royaume-Uni.

Paul Munro-Faure
Chef de l'Unité de la gestion des terres et des régimes fonciers
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Prefacio

Prácticamente todas las sociedades reconocen el concepto de propiedad estatal o pública de la tierra en que los derechos de propiedad se confieren a una institución pública del ámbito nacional, regional o de la comunidad. Los mecanismos estatales y públicos de tenencia de la tierra definen las normas para la distribución, el uso y la protección de terrenos de carácter público. Los terrenos estatales pueden emplearse para prestar servicios públicos. Las autoridades o los gobernantes consuetudinarios pueden actuar como guardianes de los recursos de propiedad común o de lugares ambiental o culturalmente sensibles en nombre de la sociedad. Se han introducido muchas formas de acuerdos de tenencia pública, que suelen diferir de los acuerdos privados limitando el acceso, el uso y la enajenación de los terrenos públicos.

A pesar del creciente reconocimiento de la importancia de los terrenos estatales y su administración adecuada, los terrenos y los activos de propiedad pública suelen contar con una pobre administración. Considerados como «libres» y disponibles, los terrenos estatales se suelen invadir, se sobreexplotan y suelen adquirirse para beneficio personal. Los mecanismos de tenencia sin definir y el registro inadecuado de los derechos de tierras contribuyen a una administración deficiente e ineficaz de los terrenos públicos, que allana el camino a las prácticas corruptas. La situación empeora cuando la gobernanza es débil, lo que es habitual en las instituciones de administración de tierras. Las soluciones para la mejora no son sencillas. Sin embargo, se ha progresado, al mejorar la transparencia, coherencia, imparcialidad y equidad de las instituciones de administración de tierras, así como al incrementar sus competencias técnicas y aclarar sus objetivos de ordenación, es decir, mejorando la gobernanza de los terrenos estatales y públicos.

A través de su labor normativa en curso sobre la ordenación de tierras del sector estatal y público, la Unidad de Gestión y Tenencia de la Tierra de la FAO pretende brindar apoyo a gobiernos y otras partes interesadas para abordar los desafíos actuales proporcionando directrices, recomendaciones sobre políticas y ejemplos de buenas prácticas. El objetivo es acrecentar la concienciación mundial acerca de los problemas persistentes y de sus repercusiones en el uso eficiente de la tierra y el acceso equitativo a la misma. La FAO publicará este año una nueva guía de la serie de Estudios sobre tenencia de la tierra dedicada a la ordenación de tierras estatales y públicas.

Los artículos contenidos en esta edición complementan un seminario internacional sobre ordenación de tierras estatales y públicas organizado por la Federación Internacional de Agrimensores y la FAO en Verona (Italia) en septiembre de 2008. Abre la edición un artículo de Jennifer Franco en que la autora sienta las bases y expresa la necesidad de formular políticas que favorezcan a los pobres respecto a los terrenos públicos. En los artículos posteriores se presentan estudios de casos de distintos entornos geográficos, en que se muestran diferentes iniciativas orientadas a la mejora y el fortalecimiento de la ordenación de tierras públicas y la gobernanza de las propiedades públicas. En Ghana, los gobiernos militares anteriores expropiaron terrenos privados sin ofrecer ninguna compensación. En el artículo de Odame Larbi se examina cómo podría rectificarse esta situación. Babu Ram Acharya destaca la importancia de los marcos de políticas, de gobernanza y jurídicos apropiados para conservar y ordenar los recursos de terrenos públicos en Nepal. Daniel Roberge presenta el nuevo catastro de tierras públicas que se ha elaborado para Quebec (el Canadá). Al explorar el contexto de privatización y restitución, Simon Keith, Kiril Georgievski y Kristina Mlitic determinan diferentes opciones que permiten una ordenación de tierras estatales más eficaz en las zonas

rurales de la ex República Yugoslava de Macedonia. Por último, Richard Grover estudia de qué forma la gestión pública y la introducción de la contabilidad en valores devengados están cambiando la prestación de servicios públicos y la gestión de la propiedad operativa en el Reino Unido.

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Réformes politiques et gouvernance en faveur des pauvres dans le domaine des terres domaniales/publiques: un point de vue critique de la société civile

Les terres domaniales/publiques ont toute leur place dans les discours contemporains sur la politique et la gouvernance en faveur des pauvres en raison de leur superficie terrestre à proprement parler et du nombre de ruraux pauvres directement concernés. Toutefois, cela n'est pas véritablement compris par les acteurs étatiques et autres, y compris par de nombreux acteurs de la société civile. Il est capital de définir les principaux critères d'une «politique foncière favorable aux pauvres» et d'une gouvernance démocratique des terres domaniales/publiques. C'est ce que cet article se propose de faire, en se fondant sur des observations et des enseignements tirés d'études spécialisées précédentes, ainsi que sur des cas empiriques figurant dans les bases de données d'organisations activistes, notamment celle du Réseau d'information et d'action pour le droit à se nourrir, organisation internationale de défense des droits de l'homme.

Reformas de las políticas en beneficio de los pobres y gobernanza en las tierras estatales o públicas: una perspectiva crítica de la sociedad civil

La cuestión de la tierra estatal o pública se repite con frecuencia en los debates actuales sobre las políticas en favor de los pobres y la gobernanza, a causa de la magnitud de su alcance en todo el mundo en términos de superficie efectiva de tierras y del número de personas pobres del medio rural directamente concernidas. Sin embargo, los agentes estatales y no estatales principales, incluso muchos de la sociedad civil, no la comprenden del todo. Es de especial importancia especificar los criterios fundamentales de una «política de tierras en favor de los pobres» y la gobernanza democrática de la tierra respecto a los terrenos estatales o públicos. Este es el objetivo que se intenta alcanzar en este artículo, a través de elementos y enseñanzas de estudios académicos anteriores y también de casos prácticos extraídos de bases de datos de organizaciones activistas, en particular la de la organización internacional de derechos humanos Información y red de acción para el derecho a alimentarse.

Pro-poor policy reforms and governance in state/public lands: a critical civil-society perspective

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State/public land is a key category in contemporary discourses around pro-poor policy and governance because of the enormity of its scope worldwide in terms of actual land area and the number of rural poor directly linked to it. However, it is not fully understood by mainstream state and non-state actors, including many civil-society actors. It is especially crucial to specify the key criteria of a "pro-poor land policy" and democratic land governance concerning state/public lands. This paper attempts to do that, using insights and lessons from previous scholarly studies and also empirical cases drawn from activist databases, including that of the international human rights organization FoodFirst Information and Action Network.

INTRODUCTION

With state/public lands under increasing pressure from private interests and public concerns, an increasingly important question is how to ensure full and effective access for the rural poor in state/public land. Against this backdrop, the international non-governmental organization (NGO) FoodFirst Information and Action Network (FIAN) was asked by the Food and Agriculture Organization of the United Nations (FAO) to contribute a civil-society perspective. In this paper, we propose a set of criteria that we believe moves towards a framework capable of prioritizing effective access to land for the rural poor, of anticipating the obstacles to achieving this, and of identifying steps forwards. FIAN offers especially relevant practical knowledge on this issue, drawn from an extensive network of country-based human rights advocates and advocacy groups. Insights from FIAN's knowledge base are supplemented by interviews with key informants, including Ben Cousins of the Institute for Poverty, Land and Agrarian Studies (South Africa), Rafael Alegria of La Via Campesina (Honduras), and Saturnino Borras Jr of Saint Mary's University (Canada). The paper is divided into four sections. The next section explains the relevance of the issue of pro-poor policy-making in specifically state/public lands, and then puts forward our ideas of the building blocks of a pro-poor land policy in state/public lands. The third section presents five case studies, each showing how a human-rights approach can contribute to truly pro-poor land policy-making. We conclude with a discussion of implications and recommendations.

RELEVANCE OF THE ISSUE

For many segments of the landless or near-landless rural poor whose rights are fragile, insecure or absent/non-existent, land and their connection to it has a multidimensional meaning and importance. Effective access to land – understood here as the recognized right to land, coupled with the actual control of it, its uses and its fruits over time – is central to existence. Not only is land essential for constructing a rural livelihood, it is also a factor in laying the foundations for social inclusion and access to basic services. Without it, rural poor households risk being left uncounted by state census takers and are more likely to face difficulties in sending their children to school, accessing basic health care

services, etc. At the same time, effective access to land is also important for autonomous political incorporation; when national transitions to elective civilian rule in the 1980s and 1990s failed to eliminate local authoritarian enclaves, many rural poor people were left captive to landed elite control. For indigenous communities, land is a component of territory and central to maintaining culture and collective identities.

With three-quarters of the world's poor considered *rural* poor, it is significant that much of the land occupied by rural poor people today is state/public land. While there are no exact data available on how much agricultural and/or cultivable land falls into the state/public category globally, most can agree that the amount is significant. According to Ribot and Larsen (2007), some 1.6 billion poor people live in forested lands worldwide, roughly 80 percent of which is considered state/public land. However, while many poor people live and depend on state/public land, their hold on it is often insecure and problematic. Competing claims and social conflict are generally accepted facts of policy-making in private lands, but in fact the same is true in state/public lands as well (Borras, 2007a).

State/public lands are often sites of struggle between contending social groups and classes for officially recognized access to the land resources needed to build decent livelihoods. For the rural poor, this may involve struggles for state recognition not just of their right to the land, but also their "right to have rights" more generally, and so is also linked to larger nation-state building. If land policy in general plays a pivotal role in both rural livelihoods construction and nation-state building, then the question of what kind of land policy to adopt is profoundly important.

In thinking about what kind of policy is best suited for the state/public land sector in particular, one must begin by assuming the pre-existence of societies in state/public land and examining those that have taken shape there historically – a failure to do so would be disastrous. This is because the distinction between "private" and "public" is mainly a formal-legal one, devised by centralizing state authorities in an earlier era in the effort to claim "foreign" or "frontier" lands and populations and make them "legible" for modern nation-state building (Scott, 1998). With the weight of central-state law behind it, the distinction endured, and today, for example, much of the land across Africa is state-owned as a legacy of colonialism (B. Cousins, personal communication, 2008). Yet rarely did the formal-legal distinctions drawn by bureaucrats in cities accurately reflect the complex human realities that existed in the countryside. Moreover, as time passed and societies changed, the formal-legal distinction was often blurred by the normal ebb and flow of both authorized and "unauthorized" human activity. This is especially true for "remote" areas where the central state and its laws were often little more than a distant abstraction. Where state authority was lacking, and amid overlapping and competing claims, local societies often evolved their own ways of regulating who has what rights to which land for how long and for what purposes.

Many scholars now view property rights not as "things" but as historically dynamic social relations shaping and shaped by an array of state and non-state institutions (Moore, 1998; Juul and Lund, 2002; Tsing 2002). If the concept of state/"public" land requires "unpacking", then so too does any given state/public land. Three aspects warrant attention. The first is social history: what are the social relations and modes of access that have evolved over time, and who was included or excluded? The second aspect is the basis for allocation or distribution of the land resources: who should receive how much of which land, for how long and for what purposes? This is the policy challenge, especially in the African context: deciding "what kinds of rights, held by which categories of claimants, should be secured through tenure

reforms, and in what manner, in ways that will not merely 'add to possibilities of manipulation and confusion'" (Cousins, 2007). The third aspect has to do with making social change in settings marked by power imbalances: where the transfer or reinforcement of access to a given land territory is necessary, how can the desired intervention be made? The underlying issue is power: "Power relations are key to understanding how tenure regimes work in practice, since 'struggles over property are as much about the scope and constitution of authority as about access to resources'" (Cousins, 2007).

The first part of the puzzle is a matter of de-facto claims; the second is a matter of *de-jure* rights; and the third is a matter of change strategy. Each dimension is important, but all three must be taken into account if a state/public land law and policy are to be effective. Here, we take full and meaningful effective access to land for the rural poor as the most desirable objective of a land policy today. By effective access to land, we mean both the recognized right to land coupled with the actual control of it, its uses and its fruits over time. This basic principle is stringent enough to preclude insecurity or fragility of tenure, and still broad enough to address a variety of problematic situations in state/public lands from the point of view of the rural poor.

To illustrate, in South Africa, for example, an approach is needed that "makes socially legitimate occupation and use rights, as they are currently held and practised, the point of departure for both their recognition in law and for the design of institutional frameworks for mediating competing claims and administering land" (Cousins, 2007). This is because "the nature of the development taking place is skewed towards private sector companies (tying in with commodification and also scales of production) and the thrust of agrarian change is towards larger scale and capital intensive forms of production", with serious (negative) implications for existing production and livelihood systems and uses of the land resource (B. Cousins, personal communication, 2008). By contrast, in the Philippines, a huge problem is the de-facto control of much state/public land by wealthy/landed elites who illegally grab it, enclose it and then exploit it for personal gain by imposing informal wage-labour and share-labour regimes. What is needed here is a policy that is explicitly redistributive in character. This is also the case in Honduras, where there is a lack of political policy instruments for "re-capturing" state/public lands held illegally by private elites or for transferring effective access to peasants, rural women or indigenous communities. In such cases, rural poor are able to remain on the land only "by means of resistance" (R. Alegria, personal communication, 2008).

Both aspects of effective access, i.e. recognition of poor people's rights and enforcement (or re-enforcement) of their control over the land, must be achieved for a state/public land policy to be considered truly pro-poor. No land policy is ever neutral, but necessarily transforms the status quo either by reinforcing or undermining it. However, the outcomes of state/public land policy are shaped not only by design but also by processes of promulgation and implementation. In reality, a single land law or policy can result in multiple outcomes because no land policy is self-interpreting or self-implementing (see Houtzager and Franco, 2003; Franco, 2008). Beyond design, what matters is how and to what extent a policy is adopted, interpreted, implemented and made authoritative by real people in society. Stepping back, drawing on Borras and Franco (2007), one can see that four broadly distinct policy paths are possible (Table 1).

TOWARDS AN ALTERNATIVE FRAMEWORK FOR A PRO-POOR LAND POLICY

Too often, "pro-poor" land policy-making has had the reverse character and effect in reality. It is not enough to claim that land policies aimed at public lands are pro-

TABLE 1
Paths of change and reform in land policies

Type of reform	Dynamics of change & reform; flow of wealth & power transfers	Remarks
(Re)concentration	Land-based wealth & power transfers from the state, community or small family farmholders to landed classes, corporate entities, state or community groups.	Change dynamics can occur in private or public lands, can involve full transfer of full ownership or not, can be received individually, by group or by corporate entity.
Non-(re)distribution	Land-based wealth & power remain in the hands of the few landed classes or the state or community, i.e. status quo that is exclusionary.	"No land policy is a policy"; also included are land policies that formalize the exclusionary land claims/rights of landed classes or non-poor elites, including the state or community groups.
Distribution	Land-based wealth & power received by landless or near-landless working poor without any landed classes losing in the process; state transfers.	Reform usually occurs in public lands, can involve transfer of right to alienate or not, can be received individually or by group.
Redistribution	Land-based wealth & power transfers from landed classes or state or community to landless or near-landless working poor.	Reform can occur in private or public lands, can involve transfer of full ownership or not, can be received individually or by group.

Source: Borras and Franco, 2007.

poor; it must be so in practice, in terms of both the process and the outcome. In this section, we propose a set of criteria that can be used to inform policy-making so that it is more capable of generating truly pro-poor land policies and policy outcomes.

Human rights approach

A human rights approach to land is anchored in the human rights tradition, where: (i) people are viewed as rights holders, rather than "beneficiaries"; (ii) states are viewed as duty bearers with the obligation to respect, protect and fulfil people's human rights, rather than "service providers"; and (iii) governments should be held accountable when they fail to meet this obligation and rights are violated. For states, the UN Committee on Economic, Social and Cultural Rights (UN, 1976, 1990) identifies the following obligations:

- to guarantee that all rights will be exercised without discrimination;
- to take deliberate, concrete and targeted steps towards the full realization of economic, social and cultural rights within a reasonably short time by all appropriate means, including particularly the adoption of legislative measures;
- to move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights and not take any deliberately retrogressive measures;
- to use the maximum of available resources in the State Party and in the community of States;
- to prioritize in State action the most vulnerable groups;
- to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The human rights tradition intrinsically involves a pro-poor approach. However, because there is no explicit human right to land in international human rights law, the obligations related to access to land have not yet been fully determined. Nonetheless, the right to land of rural communities is implied in other human rights recognized in international covenants, such as the right to property, the right to self-determination, the right of ethnic minorities to enjoy and develop their own culture, as well as the right to an adequate standard of living.

A number of relevant international legal instruments, mainly on the human right to food, lend support to the idea of a human right to land and other productive resources, with vulnerable people as the main rights holders (Table 2).

The idea of a human right to land remains contested. If the goal is to construct a framework for land policy-making that is truly pro-poor, then a human rights approach is a powerful tool precisely because it takes sides – it is not pro-elite. A human rights approach to land policy-making contains three basic elements. First, its starting point is recognition of the heterogeneity of rural societies and of the most vulnerable humans, especially as rights holders, including: "peasants, family farmers, indigenous peoples, communities of artisanal fisherfolk, pastoralists, landless peoples, rural workers, afro-descendants, unemployed workers, Dalit and other rural [poor] communities". Second, it encompasses the "actual and effective control over the land resource" including the power to control the "nature, pace, extent and direction of surplus production and extraction from the land and the disposition of such surplus" (Borras, 2006). Third, it includes land understood as territory where people live and reproduce communities and cosmologies, as established by the ICESCR and reinforced by the special rapporteur (Monsalve, 2006).

In practice, this means that truly pro-poor land policy-making is class conscious, with a commitment to ensuring that benefits go to the landless and near-landless working classes. In recognizing the plural interests of

TABLE 2
International legal instruments and human rights to land

Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966/1976)	"1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."
General Comment 12 of the Committee on Economic, Social and Cultural Rights (1999)	"26. The [national] strategy should give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families (as stipulated in article 7 (a) (ii) of the Covenant); maintaining registries of rights in land (including forests)."
Voluntary Guidelines on the right to food adopted by the FAO Council (in 2004)	"Guideline 8B Land 8.10 States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities."

Sources: UN, 1966, 1999; FAO, 2005.

landless and near-landless rural poor (e.g. landless peasants, rural labourers, indigenous communities and artisanal fisherfolk-cum-rural labourers), a land policy is more capable of anticipating its differential impact among the rural poor. This is important in situations where a limited supply of land has many land rights claimants. Forestlands in particular often host multiple classes accessing different resources therein: food, wildlife, fuelwood, non-timber forest products, timber products (Leach, 2007; Agarwal, 1994; Peluso, 1992). Truly pro-poor land policy-making also recognizes the distinct land rights of women as peasants, rural labourers, forest dwellers or pastoralists, and as women. As farmworkers, farmers, herders and fuelwood gatherers, rural poor women typically have their own connections to land resources, independent of the men within the household, entitling them to distinct land rights (Agarwal, 1994; Kabeer, 1999). Conventional land policies have tended to exclude women either by design or during implementation (Deere, 1985; Agarwal, 1994; Razavi, 2003; Whitehead and Tsikata, 2003).

Meanwhile, truly pro-poor land policy promotes or reinforces the distinct right of ethnic groups to their territorial claims as peasants and as a distinct people. Land (and land reform) policies have generally been blind to ethnic dynamics. Encroachment into indigenous territory has taken place via colonization, resettlement and extractive industry, undermining indigenous peoples' effective access to the land (Holt-Gimenez, 2008). Many violent conflicts today have an ethnic dimension to them, as in the Plurinational State of Bolivia (Assies, 2006), the Congo (van Acker, 2005), Namibia (van Donge, Eiseb and Mosimane, 2007), Rwanda (Liversage, 2003; Pottier, 2006) and Viet Nam (Sikor, 2006a, 2006b). Many land conflicts are historically grounded, so setting right the social injustices that have been committed against vulnerable segments of society is important in its own right. However, a social justice perspective is crucial for the long-term success of any land policy as sources of conflict left unresolved or new sources created by a flawed land policy are sure to constrain, if not undo, its success in the long run. Land policies that are ahistorical, banking on "here and now" economic interpretations of land, risk undermining the legitimate historical claims of at least some (if not all) affected segments of the rural poor, and only further postpone inclusive development, setting the stage for new rounds of social-political conflict.

Land policies are never neutral. Any public policy that claims to be "pro-poor" must self-consciously and explicitly articulate what it means by "pro-poor" and how it qualifies as "pro-poor". By pro-poor, we mean here a land policy that explicitly contains the following key features, interpreted flexibly depending on specific concrete agrarian conditions: (i) transfer or protection/reinforcement of land-based wealth to the landless and near-landless rural poor; and (ii) transfer or protection/reinforcement of social-political power to the landless and near-landless rural poor. A truly pro-poor land policy will seek to explicitly transfer land-based wealth to, or protect the existing land-based wealth of, the landless and near-landless rural poor. Land-based wealth means the land, water and minerals therein, other products linked to it such as crops and forest, as well as the farm surplus created from this land. A truly pro-poor land policy will also seek to transfer land-based political power to, or protect the land-based political power of, the landless or near-landless rural poor. This means being willing to confront, rather than avoid, the social-political conflicts inherently associated with land-based social relations and any serious attempt to recast them (Putzel, 1992). By political power transfers we mean both the power to control all decision-making vis-à-vis the land resource and the power to participate fully in development decision-making that affects rural poor people's lives and livelihoods.

SELECTED CASES

There is no "silver bullet" that can guarantee a truly pro-poor outcome in state/public land policy-making. However, some initiatives show that, while achieving this may be difficult, degrees of change in the right direction are possible. Some cases are briefly summarized below.

Case 1. Mozambique: 1997 Land Law

This case involves state/public land that is occupied and used in ways governed by customary law, yet vulnerable to disruptions caused by war and to the impact of overlapping laws, agencies and actions. The case shows how such challenges might be faced through more inclusive land policy-making processes. The 1997 Land Law is considered innovative partly because of the unusual degree of investigation, consultation and public deliberation that went into it.[1] These processes have been discussed in detail by Tanner (2002) and space limitations prevent us from expounding further here. What is important to point out is that the Mozambique case shows that opening up land policy-making in the formulation phase to "new" knowledge and voices *is* possible and does have value. Among other things, it ratified a widely shared understanding that the basic starting point for the new law ought to be the protection of existing local occupation and use rights.

Case 2. The Philippines: redistribution via community-based forest management

This case involves a remote area of timberland (state/public land) in the Philippines that had been enclosed and converted into a 210-ha, tenanted coconut and citrus farm by a local landed elite family in Mulanay, Quezon Province (Borras, 2007a). The family managed to keep their acquisitions hidden and beyond the reach of state law for many years. However, by the mid-1990s, state land policy, namely, the 1988 Comprehensive Agrarian Reform Program (CARP), was harnessed, leading to redistribution of the area to 76 tenants. Of the two components of the CARP pertaining to state/public land, it was the Community-Based Forest Management Programme, which establishes long-term land stewardship contract arrangements between the state and groups of individual tillers, that was applied in this case.

Case 3. Brazil: distribution via "reservas extrativistas" (RESEX)

This case involves the experience of peasant women in Ciríaco, Maranhao, Brazil, and also highlights the importance of rights advocacy groups and initiatives in helping to make state law authoritative in society. In Brazil, "reservas extrativistas" (extractive reserves, RESEX) are areas of valuable forest resources protected by the state for the sustainable use of traditional populations. The main purpose of such reserves is to ensure access to land and resources along with the continuation of the traditional way of life for the indigenous populations. Despite the existence of a national decree ordering the creation of the Ciríaco RESEX, the government delayed. Lack of funds was one issue. Another was that local landowners had illegally taken over the area, using violence to harass the inhabitants. In 1998–99, several organizations (including FIAN) carried out actions in support of the peasants, even as landowner harassment continued and the RESEX decree expired. Negotiations with the federal government continued and, in 2000, an official working group was established to undertake technical studies, a new social economic survey and the organization of inhabitants, leading to a remaking of the decree. Under growing national and international pressure, the government obtained the resources needed to carry out the demarcation and to pay compensation to the landowners. More than 50 certificates of ownership were then issued, one for every proprietor within the RESEX area, and by 2003 more than 80 percent of the area was in the hands

[1] Prior investigation revealed a favourable consensus among activists, academics and foreign land experts on the 1997 Land Law, a view later validated by B. Cousins (personal communication, 2008).

of 160 families, who received 20 ha of land each, while availing themselves of government credit programmes.

Case 4. Viet Nam: distribution via (re)allocation of forestland

Our fourth case is about how a problematic government land policy in state/public land in Viet Nam unexpectedly led to pro-poor results (Borras, 2007b). The land policy at the centre of the story has two parts. The first part entails the 1993 Forest Land Allocation Programme (FLAP1), an anti-poverty measure that targeted upland (mostly indigenous) rural poor and aimed to increase sustainable agroforest productivity. The crux of this programme involved distributing a forestland allocation (with a certificate called a "green book") to rural poor households and communities. After ten years of implementation, the programme suffered numerous problems, such as lukewarm response by the target population, inegalitarian and exclusionary outcomes, and unreliable official accomplishment claims. In response, the government made numerous reforms to the original programme, including a new Land Law in 2003 and Decree No. 181 in 2004 (collectively referred to as FLAP2), while the old "green book" certificate was replaced by a new "red book" certificate. The changes raised hopes for better outcomes, but elite capture of implementation continued in FLAP2. However, one bright spot did emerge – the case of the Bac Lang Commune, Dinh Lap District, on Viet Nam's northeast border with China, where the forestland (re) allocation programme since 2006 has taken on a "generally participatory and empowering" character, "resulting in egalitarian and pro-poor outcomes" (Borras, 2007b). The case study discusses what factors made such positive outcomes possible.

Case 5: West Bengal, India

Our final case involves forestland management in West Bengal, India, where disputes between the state and forest dwellers over access to state forestland are common. Marginalized communities like Dalits and tribal people often inhabit forestlands and depend on forest products for their survival. The Forest Law does not adequately recognize the rights of forest dwellers over forestland and forest resources. However, the state has realized that ignoring people's rights would lead to destruction of this valuable resource and to more violations of the human rights of poor local communities. Several experiments have been conducted at the grassroots level, involving communities and government jointly managing the forest resources. The case of Arabari is the leading example of a successful practice of community forest management, and it has inspired the state and central governments to replicate the same model in other parts of the country. About 1 270 ha of degraded sal forests were taken up for revival on a pilot basis. Initially, 618 families, comprising a population of 3 607, were involved through "forest protection committees". Encouraged by the experience, the state government later decided to encourage participation of forest-fringe populations in managing and rehabilitating degraded forests all over southwest Bengal. The movement spread like wildfire. Although informal and voluntary at first, it acquired the character of a formal institution when, in 1990, the state government officially recognized the forest protection committees (FPCs) in southwest Bengal. More than 1 250 village FPCs (spread over an area of 0.152 million ha of degraded forests) were formed during the next eight years. Today, more than 2 090 rural communities in the state participate with the government to manage 0.3 million ha of natural forests.

CONCLUSIONS AND RECOMMENDATIONS

In this paper, we have tried to show that basic pro-poor principles can be built into policy-making frameworks. In addition to urging policy-makers to take these insights seriously, we conclude with a few more general recommendations. First, if effective

state/public land policy-making involves understanding the underlying complexities of diverse local situations (and then allowing this understanding to inform the effort to devise truly pro-poor land policies), then it follows that substantial and significant resources must go into sociological-anthropological research and grounded knowledge accumulation, involving a wider range of data-gathering/analysing actors and processes than is usually done in policy-making circles. Second, given the importance of sustained and systematic rights advocacy from below by civil-society organizations in supporting rural poor peoples' efforts to claim their rights, it follows that substantial and significant resources must also go to expanding civil-society rights advocacy work. Finally, given that competing interests and conflict *in the context of real power imbalances* are part of the reality inside state/public land (much like in private land settings), it also follows that policy-making as broadly understood cannot ignore or shy away from this fact of life; it must fully acknowledge it in order to face it creatively and confront it head on. Policy-making initiatives that fail to do so are likely to fail to make a positive difference in effecting truly pro-poor change.

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FAO/R. FAIDUTTI

Expropriation et indemnisation au Ghana: à la recherche de politiques et de stratégies différentes

Au Ghana, depuis l'époque coloniale, l'État exerce son pouvoir d'expropriation par le truchement de divers décrets, l'objectif étant le développement socioéconomique au service de l'intérêt public. Résultat: près de 20 pour cent des terres du pays ont été expropriées au bénéfice de l'État. L'acquisition et la gestion de ces terres posent plusieurs problèmes non résolus à ce jour. Parmi ceux-ci figurent: l'acquisition de terres dépassant largement les besoins réels; le non-versement d'une indemnisation pour certaines acquisitions; l'empiètement sur des terres acquises; l'absence d'équité intergénérationnelle dans l'utilisation des indemnisations versées; l'utilisation différente des terres expropriées par rapport à l'intention ayant motivé l'acquisition; l'optimisation de l'utilisation et de la rentabilité économique des terres domaniales; et la participation du secteur privé au développement de terres expropriées. L'État occupe également certaines terres sans procéder à aucune acquisition, privant de ce fait les propriétaires de la possibilité d'exiger une indemnisation. Résultat: la population ne fait plus confiance à l'appareil étatique pour la gestion des terres. Il en résulte des tensions entre l'État et les propriétaires coutumiers, d'immenses empiètements délibérés sur les terres domaniales et des contestations du droit de l'État à revendiquer le contrôle de terres expropriées.

Cet article examine différents moyens de résoudre les problèmes susmentionnés, susceptibles de fournir un cadre pérenne pour la gestion efficace des terres publiques et d'apaiser les tensions entre l'État et les propriétaires coutumiers.

Adquisición de tierras por expropiación y compensación en Ghana: búsqueda de políticas y estrategias alternativas

En Ghana, el Estado ha ejercido su derecho de expropiación de diferentes maneras desde la época colonial. El objetivo de esta actuación ha sido el desarrollo socioeconómico por razones de utilidad pública. Como consecuencia, el Estado ha expropiado casi el 20% de las tierras del país. La adquisición y gestión de estas tierras ha dado lugar a numerosos problemas que hasta la fecha no han encontrado solución. Entre ellos, cabe señalar los siguientes: adquisición de muchas más tierras de las realmente necesarias; impago de indemnizaciones en determinadas adquisiciones; ocupación de tierras adquiridas; ausencia de equidad intergeneracional en la utilización de las indemnizaciones pagadas; cambios en el uso de las tierras adquiridas por expropiación respecto al propósito de la adquisición; optimización y rentabilidad económica de las tierras estatales, y participación del sector privado en el aprovechamiento de la tierra adquirida por expropiación. Además, el Estado ha ocupado algunas tierras sin haberlas adquirido, lo cual ha privado a los propietarios de las mismas de la oportunidad de reclamar una compensación. Como consecuencia, ha disminuido la confianza popular en la maquinaria del Estado para la gestión de la tierra. Esta situación ha generado un clima de tensión entre el Estado y los propietarios consuetudinarios, la invasión deliberada masiva de las tierras estatales y problemas ligados a la legitimidad del Estado para reclamar el control sobre las tierras adquiridas por expropiación.

En este artículo se exploran las opciones disponibles relativas a políticas para hacer frente a las cuestiones mencionadas, con miras a proporcionar un marco sostenible para la gestión eficaz de las tierras estatales y a reducir la tensión entre el Estado y los propietarios consuetudinarios.

Compulsory land acquisitions and compensation in Ghana: searching for alternative policies and strategies

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In Ghana, the state has exercised its power of eminent domain under various enactments since colonial times. Its objective in so doing has been socio-economic development for the public good. The result has been the compulsory acquisition of about 20 percent of the lands in the country for the state. The acquisition and management of these lands have given rise to several unresolved issues. These include: the acquisition of lands far in excess of actual requirements; unpaid compensation in respect of some acquisitions; encroachment on acquired lands; lack of intergenerational equity in the utilization of paid compensation; change of use of compulsorily acquired land as against the purpose of the acquisition; optimizing the use and economic returns of state lands; and private-sector participation in the development of compulsorily acquired land. The state has also occupied some lands without any acquisition, thereby depriving landowners of the opportunity to demand compensation. The result has been a loss of public confidence in the state machinery for the management of land. This has led to tension between the state and customary landowners, massive deliberate encroachment on state lands, and challenges to the state's legitimacy to claim control over compulsorily acquired lands.

This article explores alternative policy options for dealing with the above issues so as to provide a sustainable framework for the efficient management of state lands and to reduce the tension between the state and customary landowners.

INTRODUCTION

Eminent domain refers to the power possessed by the state over all property within the state and, specifically, its power to appropriate private property for public use. Thus, governments have the right of compulsory land acquisition, with compensation, for the broader public service (Deininger, 2003). However, as Kotey (2002) has noted, the exercise of such power is not without controversy. The way in which this power is exercised in many developing countries, especially for urban expansion, undermines tenure security. Moreover, because often little or no compensation is paid, it also has negative impacts on equity and transparency (Deininger, 2003). The effect is that there is massive encroachment by expropriated owners, as well as land sales by landowners in informal markets at low prices in anticipation of expropriation.

All lands in Ghana are owned by customary institutions. Therefore, the state can access land principally through the invocation of the powers of eminent domain. Such powers have been used extensively with many undesirable outcomes including: massive encroachments; unpaid compensation; change of use of acquired lands as against the purpose of acquisition; and divestiture of state enterprises to private entities. There is now a search for new policy options for addressing these issues under the Ghana Land Administration Project and these are discussed in this paper. The paper starts with a brief description of land tenure in Ghana, followed by a discussion of the legal and institutional basis for compulsory

acquisition. The key outcomes of exercising the powers of eminent domain then follow. Policy options and strategies for dealing with outstanding issues are then discussed. The discussion focuses on compulsory acquisitions made before the 1992 Constitution came into being (Republic of Ghana, 1992).

LAND TENURE IN GHANA

In Ghana, land is owned predominantly by customary authorities (stools, skins, clans and families). Together they own about 78 percent of all lands, the state owns 20 percent and the remaining 2 percent is owned by the state and customary authorities in a form of partnership (split ownership).

Customary land represents all the different categories of rights and interests held within traditional systems and includes stool, skin, clan and family lands.[1] Such ownership may occur through: discovery and long uninterrupted settlement; conquest through war and subsequent settlement; gift from another landowning group or traditional overlord; and purchase from another landowning group. Different customary systems operate in different parts of the country, but all of them exhibit very strong, dynamic and evolutionary characteristics (Ouedraogo, Gwisei and Hitimana, 2006). They have been adaptable through the years and have supported changing agricultural and farming systems at different times.

Both customary and common law rights exist in land and often coexist in the same piece of land. The customary rights and interest include:

- The allodial interest, which is the highest proprietary interest or right known to exist in customary land that is not subject to any restrictions on rights of user or obligations other than restrictions or obligations imposed by statute. Such interest may reside in a stool, clan, family or private person.
- Customary freehold: the rights of subjects to the free use of land subject only to such restrictions or obligations as may be imposed upon a subject of a stool/skin or a member of a family who has taken possession of land of which the stool or family is the allodial owner either without consideration or upon payment of a nominal consideration in the exercise of a right under customary law.
- Sharecropping, where the proceeds of a farm are divided according to predetermined arrangements, or where the land rather than proceeds are shared.
- Alienation holdings: land acquired outright by a non-member of the landowning community, usually for agricultural purposes.
- Community's common property rights: rights to secondary forest produce, rights to water, rights to common grazing grounds, etc.
- A range of derived/secondary rights.

The common law rights include freehold, leasehold, licences and easements. Customary lands are managed by a custodian (a chief or a head of family) with the principal elders of the community. Any decision taken by the custodian that affects rights and interests in the land, especially disposition of any portion of the communal land to non-members of the landholding community, requires the concurrence of the principal elders.

The state exerts considerable control over the administration of customary lands.[2] All grants of stool land to non-subjects of the stool require the concurrence of the Lands Commission to be valid. No freeholds can be granted out of stool lands. Foreigners cannot own leases of more than 50 years in stool and state lands (Article 267[5] of the 1992 Constitution). Revenues from stool lands are collected and disbursed by the Office of the Administrator of Stool Lands (OASL). Only 22.5 percent of the revenue

[1] For extensive discussion of these, see Bentsi-Enchill (1964), Asante (1975), Bower (1993) and Larbi (1994).

[2] This is currently limited to stool/skin lands as defined in the Constitution. The restrictions do not affect family lands (Article 295[1]).

eventually reaches the landowners.[3] There is much resentment from the traditional authorities to this disbursement formula.

LEGAL BASIS FOR COMPULSORY ACQUISITION AND COMPENSATION

The Constitution of the Republic of Ghana guarantees private property ownership. Article 18(1) provides that "every person has the right to own property either alone or in association with others". Article 20(1) provides that "No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the taking of possession or acquisition is necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit". Moreover, the compulsory acquisition is made under a law that makes provision for the prompt payment of fair and adequate compensation. Article 20(3) provides that where a compulsory acquisition or possession of land effected by the state in accordance with Article 20(1) involves displacement of any inhabitants, the state shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values. The Constitution further provides that any property compulsorily taken possession of, or acquired in the public interest or for a public purpose, shall be used only in the public interest or for the public purpose for which it was acquired. Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property, immediately before the compulsory acquisition, shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation received as provided for by law or such other amount as is commensurate with the value of the property at the time of the re-acquisition.

[3] According to the Constitution, stool land revenue must be disbursed as follows: 10 percent to the OASL as administrative charges. The remaining 90 percent is taken as 100 percent and disbursed as follows: 55 percent to the District Assembly within which the land is located, 25 percent to the landowning stool and 20 percent to the traditional council to which the landowning stool belongs.

PUBLIC INTEREST AND PUBLIC PURPOSE

Kotey (2002) argues that acquisition in the public interest could mean acquisition by government for public bodies and statutory corporations but also for private companies and individuals for purposes that, although they may contribute to public welfare, confer a direct benefit, including profit, on the user. Hotels, private houses, real estate development, banks, filling stations, etc. fall into this category (Larbi, Antwi and Olomolaiye, 2004). This agrees with the wider case for considering public interest as "any right or advantage which ensures or is intended to ensure to the benefit generally of the whole people of Ghana" (Article 295[1] of the Constitution). This provides a wide array of situations for which compulsory acquisition can be made and is prone to abuse (Kotey, 2002).

The 1992 Constitution posits a different regime for compulsory acquisition from the period before the Constitution. Whereas the Constitution now provides for the possibility of re-acquisition by the pre-acquisition owner (above), there is no such provision in the pre-1992 compulsory acquisition laws. Many of the outstanding issues of compulsory acquisition that have created tension between the state and the pre-acquisition owners relate to acquisitions made before the 1992 Constitution (as discussed below). The principal enactments for compulsory acquisition are the State Lands Act of 1962 (Act 125) as amended, Land (Statutory Wayleaves) Act of 1963 (Act 186), State Property and Contracts Act of 1960 (CA 6), Administration of Lands Act of 1962 (Act 123) and the Public Conveyancing Act of 1965 (Act 302). These acts have been used extensively and their effects are discussed below.

EFFECT OF COMPULSORY ACQUISITION

In dealing with compulsory land acquisitions, the state is often faced with three issues:

- outstanding issues in situations where the acquisition process has been completed and compensation paid;
- occupation without acquisition;
- the acquisition process has been completed but compensation has not been paid.

Using specific examples of lands acquired throughout the country, these are discussed below.

Outstanding issues where the acquisition process has been completed and compensation paid

Table 1 summarizes the main outcomes of the issues arising under this theme.

Owing to the high economic value of state lands in prime areas of Accra (about US$250/m^2), the state has started the public auctioning of lands in order to realize the full economic benefits from the land and also to increase the density of development and occupation using private capital. This has not been without problems as the original owners have vehemently opposed such sales. Some legal practitioners take a narrow view of the meaning of public purpose and, therefore, advocate for return of acquired lands to the pre-acquisition owners in the event of any change of use of any portion of the land, as was the decision of the High Court in *Nii Tetteh Opremreh II v Attorney General & Anor* (unreported ruling of the High Court of Ghana dated 20 April 1999). However, in *Amontia v MD, Ghana Telecom Co.*, the Court of Appeal noted that the provision of a staff housing scheme on land acquired for a wireless station was not inconsistent with the purpose for which the land had been acquired. The court noted that in the development of land acquired for public universities, facilities such as laundry services, hospitals, police stations, shopping malls, filling stations, basic schools, Internet cafes and hostel facilities are not run by the university but by private entities and are open to the general public. These uses are ancillary to the establishment of the public university and are not inconsistent with the purpose of the acquisition, the public good in this case being job creation and tax revenue.

Occupation without acquisition

The next critical issue of compulsory acquisition is the number of sites occupied by state agencies without acquisition. As noted by Okoth-Ogendo (2000), the state is both an inefficient administrator as well as a "predator" on land that in law or in fact belongs to ordinary land users. An inventory of state acquired/occupied lands in the Central Region of Ghana carried out in 2005 showed that, out of 890 sites, only 288 sites (32.35 percent) had been completely acquired. As many as 602 sites (67.64 percent) were occupied by the state without any acquisition. The

TABLE 1
Treatment of compulsorily acquired lands

Treatment	Examples
Lands transferred to private entity to undertake stated purpose of acquisition	Divestiture of Ghana Rubber Estates in the Western Region
Lands used by the state for a different purpose	Africa Union Village built on land acquired for airport extension
Land transferred to a private entity for a different purpose	Site for the Accra Mall
Land substantially used for the stated purpose and portions used for ancillary or reasonably incidental purposes by private entities	Filling stations, laundry services, banks developed on university lands
Change of land use resulting from severance	Portion of Achimota School land turned into Achimota Forest Residential Area
Land acquired in excess of actual demand and surplus land used for other purposes	Site for Madina Social Welfare portion used for resettlement and the development of the Institute of Local Government Studies
Land massively encroached upon by expropriated owners, thwarting the realization of the purpose of the acquisition	Sites for police depot and the National Sports Complex in Accra

inventory revealed that, in most of these occupations, the acquisition process had been started but had ended at the Site Advisory Committee (SAC) level, revealing the flaw in the law. Once an SAC approved the acquisition, the beneficiary institutions entered the land, in contravention of the laws on compulsory acquisition. Such situations raise governance issues in the use of compulsory acquisition powers. The situation is compounded where such lands are divested by the state to private entities, as has been the case with many cocoa plantations owned by the Cocoa Marketing Board. The purported 20 percent of lands owned by the state is underestimated.

Compensation

The third issue is the non-payment of compensation. Article 20(2) of the Constitution states that compulsory acquisition of property by the state shall only be made under a law that makes provision for:

- the prompt payment of fair and adequate compensation;
- a right of access to the High Court by any persons who have an interest in or right over the property, whether direct or on appeal from any other authority, for the determination of their interest or right and the amount of compensation to which they are entitled.

The various claims for which an expropriated owner may be compensated are:

1. market value of the land taken; or
2. replacement value of the land taken; and
3. cost of disturbance; and
4. other damage (severance and injurious affection); or
5. grant land of equivalent value.[4]

The rights and interests in land that are currently eligible for compensation are the allodial interest vested in the head of the landowning community, freeholds and leaseholds. Freeholds and leaseholds usually present little or no compensation problems as long as the affected holders are able to establish their interests (often with supporting documents). Compensation for communally owned land is paid to the head of the landowning community. Currently, no compensation is paid directly to holders of customary rights such as the customary freehold. All such holders are expected to be compensated by the head of the landowning community to whom the compensation for the allodial interest is paid. Compensation is largely paid in cash except in cases where land of equivalent value is given to the expropriate owner, as in cases where the expropriated owner is resettled (as happened with the Volta River Project in the 1960s). The process and procedures are long and convoluted. They involve resettlement on either part of an already acquired land or land yet to be acquired for the purpose of resettlement of persons to be displaced, requiring that the acquisition procedures be gone through all over again.

Customary freeholds, informal occupation and derived rights (rights derived from allodial owners or freeholders) are currently not recognized by the existing law as being rights eligible for compensation. Therefore, owners of such rights are not entitled to compensation as of right. If any payments are made, they are *ex gratia* and are based on the value of the structures and other assets situated on the land. Development partners funding projects that involve the displacement of people demand that such people be compensated irrespective of the rights they possess, as is the situation with the many occupiers on the reservation for the N1 highway in Accra (to be constructed with funds from the Millennium Challenge Corporation).

In practice, compensation tends to be based largely on the market value of the affected land, i.e. the sum of money that the land might have been expected to realize if sold on the open market by a willing seller at the time of the declaration of the acquisition. Where the property

[4] *State Lands Act 1962*, Section 4. Item 5 is an alternative to items 1–4.

under compulsory acquisition is one that cannot easily be sold on the market, the replacement value may be used as the basis of valuation. This has been defined as the value of the land where there is no demand or market value for the land by reason of the situation or of the use of the land at the time of the acquisition, and it is the amount required for the reasonable re-instatement equivalent to the condition of the land at the date of the said acquisition (Act 125, Section 7).

Other principles underlying the valuation of land for compulsory acquisition are that the value to be assessed should be that accruing to the owner of the land and not the acquiring authority. Therefore, the valuation cannot take into account the intended benefits that the acquired land would bring to the acquiring authority.

Where compensation for land is assessed but cannot be paid owing to a dispute, government is required to lodge the accrued amount in an interest-yielding escrow account pending the final determination of the matter. The lodged amount plus interest thereon is payable to the person so entitled upon the final determination of the matter (Act 125, Section 4[6]).

The outstanding compensation issues relate to compulsory acquisitions made before the 1992 Constitution. It has been held in *Amontia v MD, Ghana Telecom* that the Constitution does not have retrospective effect. It implies that compulsory acquisition and compensation laws that operated before the Constitution came into effect should be used to address this outstanding issue. In all the acquisition laws, compensation can be paid only when the acquisition process is completed. This process has given rise to three main issues:

- "illegal" occupation of land by the state without acquisition;
- denying expropriated owners the opportunity to claim compensation;
- huge state debt in respect of outstanding compensation.

According to the inventory undertaken for Central Region, as at December 2005 the outstanding debt in respect of compensation payment in that region was more than US$65 million. The bulk of the outstanding compensation relates to sites occupied by the state without legal acquisition. Denyer-Green (1994) argues that one purpose of compensation should be to overcome opposition from expropriated owners by the payment of a price that turns an unwilling seller into a willing seller. If this is the case, then the resentment of communities against the occupation of their land by the state without compensation is justified as they have no means of even putting in claims for compensation. The situation is the same in all other regions. The indebtedness of the state in outstanding compensation is huge and there is no way that the state can settle all amounts from its budget. Even in cases where compensation has been paid, there are problems associated with intergenerational equity in the utilization of the compensation money. Thus, even though an amount sufficient to rebuild the entire La township at the time was paid to the La Stool for the acquisition of land for Accra Airport in 1947, there is no monument or development to show how the amount was utilized. This has led the current generation to think that the compensation either was not paid or was inadequate – a cause for community agitation against the state.

The issues that require policy directions include:

- How the compensation debt should be handled and paid.
- In situations where the acquired land has been encroached upon and the purpose of acquisition has been defeated, how the state should treat those who have lost their land rights as a result of the acquisition and subsequent encroachments.
- Where the compulsorily acquired land has been divested to private entities, which should be responsible for the payment of compensation. This becomes a critical issue where part of the divested property has not been fully developed.

- How the state ensures intergenerational equity in the use of compensation money so that subsequent generations will also benefit from payments for compulsory acquisition.

SEARCHING FOR POLICY OPTIONS

In discussing available options, it is instructive to discuss briefly the lessons learned from the inventory exercise and cabinet directives to provide direction for the development of policy and to deal with the outstanding issues. The key lessons include:

- The state is occupying more land than estimated. The full implication of the extent of expropriation may not be known until an inventory has been concluded for the entire country.
- There is a need to review the acquisition processes and procedures to enable would-be expropriated owners to participate in the process.
- Government directives were to the effect that, wherever it was possible, 50 percent of the acquired lands should be returned to the original owners in situations where compensation had not been paid and where land had been acquired in excess of actual demands. However, there are no standards to guide the implementation of these directives.
- Government will not open for negotiations any land for which compensation had been fully paid, irrespective of the current use of the land. This stance still provides a source of conflict between the state and citizens as some of these lands have been put to commercial uses.
- Up-to-date and accurate land records are important for improving governance in land administration and for reducing tension between the state and its citizens.
- Local knowledge should not be discounted. Local communities knew even the areas that had not been formally acquired, the extent of land being occupied and the uses to which the lands were being put.

In searching for options for dealing with the issues such that the use of compulsory purchase powers will not be considered as *ultra vires*, three issues must be considered:

- the use of compulsory purchase powers outside the statutory wording of the legislation;
- the misuse of the powers;
- a breach of the rules of natural justice – these rules require impartiality by the decision-maker and the right to hear and be heard in a matter affecting a person's interest (Denyer-Green, 1994).

In *Amontia v MD, Ghana Telecom*, the Court of Appeal noted that "law is very dynamic and progressive. Therefore, what constituted an interpretation thirty or forty years ago may not hold substance in the present day. What this means is that, because society itself is changing so fast with development, law cannot be static. Law as an engine of society must be seen to move along with the developmental trends, otherwise chaos, anarchy and confusion will be the sure recipe that results therefrom." This admonition must guide the evaluation of any policy options and the new land laws to be drafted.

Several options have been implemented in the past in dealing with compensation payments. They have included: lump-sum payments (which created the intergenerational equity problems); land bonds (which became problematic because rising inflation eroded the value of the bonds and at a point the Central Bank could not honour the bonds); and annual compensation rental (which has become a huge debt as the rents have been reviewed over time to reflect the current values of the land). These old methods have proved ineffective and unpopular even though they provide good lessons and guidance.

The policy options available to the state must address the outstanding issues and they must generally be acceptable to the public. The following options and strategies may be considered:

- Develop appropriate guidelines and standards for compulsory acquisition. Currently, there are no standards for compulsory acquisition for various uses – education, health, agriculture, etc. This has created the situation where lands are acquired in excess of actual need.
- Complete all outstanding acquisitions based on actual needs so that expropriated owners will have the opportunity to submit claims for compensation. This will require high expenditure in terms of surveying, inventory and completion of the procedures for compulsory acquisition.
- Return lands in excess of actual need to the pre-acquisition owners in order to reduce the compensation burden. The dilemma is that when the state needs land in the future it may have to acquire at a higher price.
- The state should consider alternatives to monetary compensation, including provision of infrastructure, special projects, off-loading of government shares in viable companies and *ex-gratia* payment to affected landowning groups and communities, taking into account factors such as location of the land (urban/rural), size of land involved, and the national interest.
- The basis of compensation is changed from lump-sum to annual payments in order to ensure intergenerational equity. The dilemma is whether the state must be indebted to a particular community forever for acquiring land for national development projects. Alternatively, the state should pay a lump sum but ensure that the uses to which the funds are put will fulfil the requirements for intergenerational equity.
- Auction the undeveloped lands and use the proceeds to pay compensation, or divest some of the state-owned enterprises on acquired lands and use the proceeds to pay compensation.
- A programmed debt payment schedule out of national budgets over a period of time. This will have to be weighed against potential disturbance to the stability of the economy that the injection of huge sums of money may cause.
- The state agrees with expropriated owners through local and national discussions the fact that the state is not able to pay all the outstanding compensation and provides a token lump sum to be paid to all expropriated owners for the pre-1992 acquisitions. This will close the chapter on the outstanding issues. Even here the amount involved may run into billions of dollars and seriously affect the national budget.
- Trusteeships, with each expropriated community setting up a trust into which the compensation money is paid and managed by trustees. This may also address the intergenerational equity issue.
- Return unutilized lands to the pre-acquisition owners in lieu of payment of compensation.
- Regularize encroachments at penalty and use the proceeds to pay compensation.

No one option may be sufficient in seeking solutions to the outstanding issues. However, a combination of some of the above may provide the necessary solution.

CONCLUSION

The practice of compulsory acquisition in Ghana raises issues of governance in land management. Compulsory acquisition will still be used in the future to provide land for development in the public interest. As a new land bill is being prepared for the country, the laws on compulsory acquisition will have to be revised to take into account the provisions of the 1992 Constitution. It is necessary to construct provisions that provide for: quality management of the expropriation processes; protection of property rights; just and fair compensation to all those who lose their rights; a pro-poor approach to compensation; reduced uncertainty in the valuation process; and

the promotion of good governance in the expropriation process. Expropriation-related land tools, such as better planning processes, transparent compensation procedures, good enumeration of expropriated owners, and mechanisms for conflict resolution must be developed to support the process. Consideration should be given to increasing the amount of compensation well above any market value in order to accelerate acquisitions and avoid wasting time and money on negotiations. The state should even be given a limit within which to agree on compensation, losing the right to acquire the land should it fail to do so within the given time frame. It is time to think outside the box and develop innovative approaches to compulsory acquisition that promote equity and transparency. The policy options available to the state require serious dialogue with the key stakeholders, the identification of champions, and a dialogue with the hierarchy of the chieftaincy institution up to the National House of Chiefs.

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Gestion des terres domaniales et publiques au Népal

Au Népal, la majorité de la population rurale pratique une agriculture de subsistance. On constate un taux élevé de migration des paysans sans terre des montagnes vers les plaines et des zones rurales vers les zones urbaines à la recherche de terres plus adaptées à l'agriculture et de meilleurs revenus. Il en résulte un empiètement massif sur les terres domaniales et publiques. Il existe plusieurs dispositions juridiques pour la préservation et la gestion des terres domaniales et publiques, mais en l'absence d'une politique foncière détaillée, d'une législation foncière intégrée et d'un bureau chargé de leur préservation et de leur gestion, ces terres subissent un appauvrissement continu. Cet article formule des recommandations pour une meilleure gestion des terres domaniales et publiques au Népal.

Gestión de tierras estatales y públicas en Nepal

La mayor parte de la población rural de Nepal se dedica a la agricultura de subsistencia. Existe una gran tasa de migración de personas pobres sin tierras desde las montañas hasta las llanuras y desde las zonas rurales a las urbanas en búsqueda de tierras de cultivo y medios de vida mejores. Como consecuencia, se ha producido una intensa ocupación de las tierras estatales y públicas. Existen diversas disposiciones jurídicas para la preservación y gestión de las tierras estatales y públicas, pero se han ido debilitando progresivamente como consecuencia de la falta de una política global y una ley integrada referentes a la tierra, así como de una oficina responsable de la preservación y gestión de dichas tierras. En este artículo se hacen recomendaciones para la mejora de la gestión de las tierras estatales y públicas de Nepal.

Government and public land management in Nepal

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Most of the rural population in Nepal is engaged in subsistence farming. There is a high rate of migration of poor landless people from the mountains to the plains and from rural to urban areas in search of better land for farming and better livelihoods. This has resulted in heavy encroachment on government and public land. There are several legal arrangements for the preservation and management of government and public land, but the lack of a comprehensive land policy, an integrated land act and a bureau responsible for their preservation and management has resulted in their continuous depletion. This article makes a recommendation for improved management of government and public land in Nepal.

BACKGROUND

Nepal is a small mountainous landlocked country in South Asia. Lying between India and China, it has an area of 147 181 km^2 and a population of 23.4 million inhabitants. It has a rich human culture and natural biodiversity with more than 60 ethnic groups and 70 spoken languages. Occupying only 0.1 percent of the earth, Nepal is home to 8 percent of all the world's population of birds (more than 848 species), 4 percent of the world's mammals, 11 of the world's 15 families of butterflies (more than 500 species), 2 percent of all flowering plants in the world, 600 indigenous plant families and 319 species of exotic orchids. However, economically, the situation is not that encouraging. Per capita income in Nepal is a mere US$240 per year. Worst of all, the single indicator showing the condition of people in Nepal is the percentage of the population living below the poverty line – 38 percent (Nepal Tourism Board, 2002). Some 30.7 percent of the population is engaged in subsistence farming (SD–CBS, 2004). The country consists of five physiographic regions: the Terai (or the plains with a minimum altitude of 68 m), the Siwaliks, the Middle Mountains, the High Mountains and the Himalayas (with a maximum height of 8 848 m). Most of the fertile agricultural lands lie in the Terai plains and the river valleys in the Siwaliks and the Middle Mountains. These regions also have more significant economic and development activities. With almost all the road network located in these areas, they are also home to all the 58 major urban centres (municipalities and submunicipalities) in the country. Therefore, there is heavy population pressure on these areas. A natural consequence is the growth of migration of the poor and landless from the higher and less fertile rural mountains to the more fertile plains and urban centres in search of land for tilling and jobs to provide a livelihood. This results in encroachment on government and public land and in the growth of slums. The protection of government and public land in order to safeguard the environment and natural habitat and to mitigate natural disasters (flooding, landslides, etc.) in a context of climate change is currently a prime challenge to land management in Nepal.

GOVERNMENT AND PUBLIC LAND – REGISTRATION, PROTECTION AND CHALLENGES

In Nepal, government and public land is defined (LBMC, 1963) as follows. "Government land" means roads, paths, railways, and land housing government buildings or constructions; and this term also denotes forest, shrubs, rivers, rivulets,

land abandoned by rivers, lakes, ponds and their banks, canals, water channels, unregistered land, uncultivated land, unused landslopes, sands and other lands specifically denoted so by the Government of Nepal through publication in the *Nepal Gazette*. "Public land" means land allocated for use not only by individuals but by the general public, such as paths, ponds, springs, wells and their banks, cattle exits, grazing land, graveyards, public inns, temples, place for religious practices, memorials, courtyards, sewers, market places, public entertainment and sports grounds and other lands specifically denoted so by the Government of Nepal through publication in the *Nepal Gazette*.

Thus, government land can basically be classified into two categories: government land owned by particular government entities, such as government building complexes; and government land owned by government in general, such as forests and unregistered/uncultivated land. Public land is not owned by any individual or institution and is denoted as public land in the land registers. The maintaining of the inventory and the protection of public land is the responsibility of the local unit, e.g. the respective village development committee (VDC), municipality or the district development committee (DDC). Clauses 25(c) and 93(a) of the Local Self-Governance Act 1999 mention one of the functions and duties of the local ward committee: "to assist the VDC/Municipality in keeping inventory of, and in protecting, population, houses, land, rest houses, shelters, inns, temples, shrines, hermitages, monasteries, mosques, madarsas, holy places, barren land, ponds, wells, lakes, deep water, canals, taps, stone water taps etc" within their areas. Clause 189(e) of the same Act mentions that one of the functions and duties of DDCs relating to land reform and management is "to protect and promote the unregistered land and government barren land situated within the district development area" (LBMC, 1999).

In Nepal, the survey officer of the district survey office is responsible for the primary survey of all land including government, public and private land and the preparation of the cadastral maps and related land registers, which include the attributes of the land (e.g. class, area and use) and the landowner (e.g. name, citizenship details and address). The land revenue officer of the district land revenue office is the registrar of land and maintains the land records once handed over by the survey officer. The Land (Survey and Measurement) Act 2002 and Land Revenue Act 1977 categorically prohibit the registering of government and public land in the name of individuals. In the event of such land being registered in the name of individuals prior to or after the enactment of these laws, the registration shall automatically be invalid and the land will automatically be maintained as government or public land as before. There is also legal provision for maintaining the record of government and public land. The 1998 amendment of the Land Revenue Regulations 1979 has made the related district land revenue office responsible for the protection of government and public land. Article 22A has the mandatory provision that the land revenue office should register the government and public land under its area of jurisdiction and maintain its record update in the prescribed schedules. It states that the conservation and protection of such recorded government and public land shall be the responsibility of the relevant land revenue office (DOLRM, 2001).

During cadastral surveys and re-surveys, the surveyors should pay special attention to the registration of government and public land in the name of the government. During adjudication of land boundaries, it is necessary that government and public land and their boundaries be identified first. All government and public land should be registered in the name of the "Government of Nepal" and a land ownership certificate provided to the government office concerned in the case of such land under its direct use, and to the relevant district administration office in the case of other government and public land (Acharya, 2006).

There is a clear distinction between the government authorities responsible for registering land and those responsible for its conservation, protection and custodianship. The district survey office or the district land revenue office is responsible for registering private, government or public land. Each government office is responsible for the conservation, protection and custodianship of the land under its direct use, as are any other private users for their own private land. The conservation, protection and custodianship of government land such as forests, national parks and wildlife reserves are outlined in the Forests Act 1982. No land within the national forest may be registered in the name of individuals. Any such registration is automatically invalid (LBMC, 1982). Government land designated as forest is under the custodianship of the Department of Forests, and government land designated as a national park or wildlife reserve is under the custodianship of the Department of National Parks and Wildlife Conservation. However, there is not a government agency responsible for the conservation, protection and custodianship of other government and public land.

The local chief district officer (CDO) also has an important role in the protection of government and public land. As per Clauses 9 and 10a of the Local Administration Act 1971, the CDO can order the demolition of houses constructed by unauthorized persons on government and public land and impose fines up to NRs5 000 (about US$65). Nobody can cultivate government and public land without proper government authority. In the event of unlawful cultivation or providing unlawful authority for cultivation, the CDO can impose a jail term of three months. The CDOs should maintain the record of government and public land under their jurisdiction and provide a copy to the relevant land revenue office and office of the DDC (LBMC, 1971).

The above shows that, in Nepal, many different organizations and authorities have been entrusted with the legal responsibility for maintaining the records and protection of government and public land (Table 1), and that, in most cases, the responsibilities are overlapping. These are the real challenges as it can be easily understood that everybody's work is nobody's work. Owing to such ambiguity, the work has not been very effective. However, as the district land revenue office is the authority for maintaining records of all kinds of lands, and the land revenue office and the survey office are organizations responsible for land registration, they cannot escape from the duty of maintaining the updated records and thereby providing security of the government and public land. Out of 75 districts in Nepal, the inventories of the government and public land in 15 districts are published in book form for

TABLE 1
Agencies directly involved in the protection/conservation of government/public land

Agency	Mandate	Relevant legislation
Local unit (village development committee or municipality)	Maintain inventory and protect public land	Local Self-Governance Act 1999
District land revenue office	Register, maintain and protect government and public land	Land Revenue Act 1977 and Regulations 1979
District survey office	Conduct cadastral survey, adjudicate boundaries and register private, government and public land	Land (Survey and Measurement) Act 1963
District forest officer	Conserve and protect forests	Forests Act 1982
Chief district officer	Remove unauthorized possession and impose penalty Maintain record of government and public land	Local Administration Act 1971
District land revenue office	Register land	Land-related Act 1965, Land Revenue Act 1977
Department of National Parks and Wildlife Conservation	Protect and conserve protected government lands	National Parks and Wildlife Conservation Act 1972

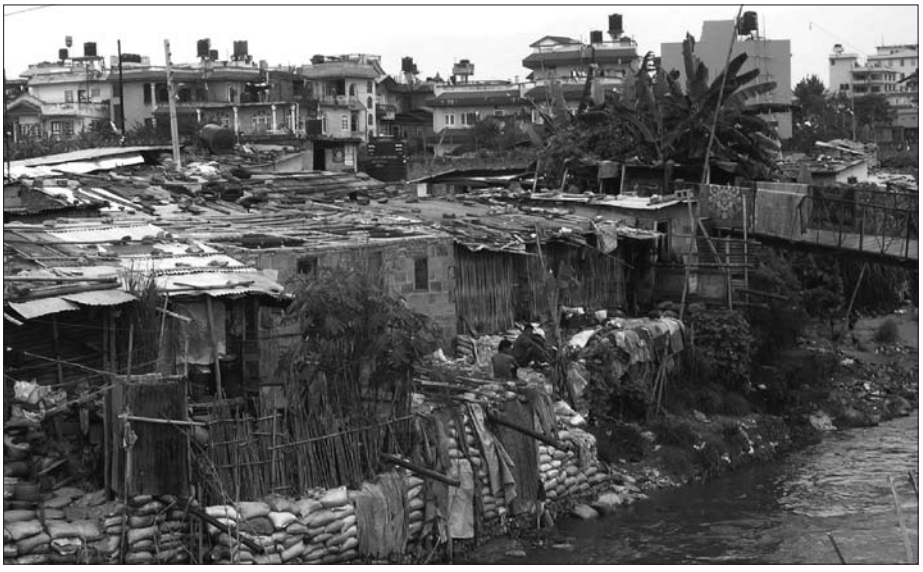
general public use and the rest are in the process of publication (Acharya, 2006). With respect to physical security of the forests, national parks and wildlife reserves, specific government departments exist. However, for other government and public land (except under direct use of government entities), no custodian department is specifically responsible. Legally, both the district administration office and the land revenue office have responsibility for their protection.

ENCROACHMENT ON GOVERNMENT AND PUBLIC LANDS, AND CHALLENGES TO THEIR PROTECTION

Despite all legal provisions for the maintenance of records of government and public lands and their protection, there is continuous encroachment on public and private land in Nepal and their areas are under continuous depletion. Effective and sustainable land management is still lacking. Many parts of the forests are being cleared, many banks of rivers are being turned into slums, banks of highways and other roads are being turned into settlements and markets, and many cultivable public and government lands are being turned into farmland. There are many reasons for such illegal encroachments on government and public land. Some of the major reasons can be categorized as:

- poverty, landlessness and the search for better income;
- conflict and displacement;
- open border and immigration by foreign poor;
- political instability and lawlessness;
- legal loopholes;
- lack of political will and policy stability;
- lack of public awareness;
- ambiguity of responsibility and custodianship.

As in many other developing countries, there is a continuous tendency of rural populations to move to urban areas in search of better income. In the Nepalese context, there is also a strong tendency of migration from less favourable to relatively more favourable areas. Therefore, the tendency is to move from the extreme rural areas to local bazaar areas, to local towns, to district headquarters (town/city) and ultimately to the capital city in order to look for work and better wages. Much of the population is engaged in subsistence farming. Farmers tend to move to lower mountains and ultimately to the fertile plains of the Terai. With the little money they have, they cannot afford a suitably sized farm that can ensure a livelihood. Therefore, they encroach on government and public land. Similarly, the heavy flow of rural poor has increased slums and encroachment on public land, such as the banks of rivers.



Encroachment on public land.

The 12-year-long conflict (1994–2006) in the country has also contributed to this encroachment process with the displacement of people and immigration from remote parts of the country to the Terai and urban areas, where there was a relatively higher presence of the state. Although no official data are available for such displacement and immigration, it is natural that this has contributed to increased pressure on government and public land. Nepal has an open border with the provinces of Bengal, Bihar and Uttar Pradesh in India. Coincidently, these provinces are the most heavily populated provinces and also home to the most poor in India. Because of the custom of open borders with India, a systematic record of people commuting across the Nepal–India border is not maintained. It is natural that there is a heavy influx of foreign poor in the Terai and urban areas of Nepal. The 2001 population and housing census shows that the foreign-born population in Nepal is 2.7 percent of the total population and that these people are mainly of Indian origin. The largest proportion of foreign-born people is in Terai area bordering India (with a maximum of 7.3 percent in Rupandehi District). The percentage of foreign-born people living in Nepal for more than ten years is 50.3 percent. Given the lack of appropriate statistics and the possibility of underestimation, the true figures for immigrants, mainly Indians, could be even higher.

Nepal has experienced political instability for many decades. There has been a distinct lack of law enforcement. The constitution has been changed at least six times in the last 60 years. The current interim constitution has undergone its fifth amendment within little more than a year of existence. Owing to such frequent political changes in the country, people do not show adequate respect for the law. Moreover, people tend to blame the government for all their problems and want to take the law into their own hands. This has resulted in increased encroachment on government and public property.

There are also some legal loopholes that enable encroachment on government and public land. In the absence of a strong legal body to stop them, non-law-abiding people tend to encroach upon government and public land. The provision of hal-aabadi (newly cultivated land and applied for land or title registration) and the correction of cadastral maps and land records in cases of discrepancy between map/record and the reality on the ground provide room for legalizing unlawful encroachment on government and public land. Another very strong reason for encroachment on government and public land is the lack of political will and policy stability on how to deal with landlessness, the ex-kamaiya (ex-bonded labour) problem, environmental protection, etc. The different governments from the Panchayat era (political system before 1991) until today have not been able to implement a sustainable policy for dealing with the problem of landless farmers and ex-kamaiyas. As an immediate response to the agitation of the landless farmers, ex-kamaiyas and the pressure from their local party cadres, different governments in the past have constituted land reform commissions and charged them with legalizing the encroachment on government and public land as a way to solve the problem. Instead of providing landless farmers with access to alternative sources of income, past governments have always considered that allocating land for subsistence farming would resolve their problems. Duplication of responsibility, more focus on maintenance of records rather than physical maintenance, protection and overall management of government and public land was the focus of the discussions in the section above. The Department of Forests and the Department of National Parks and Wildlife Conservation have been entrusted with the protection and maintenance of the national forests and the national parks and wildlife reserves. Experience has shown that their organizational structure, particularly the structure of the Department of Forests, is far from adequate and they have not been

able to reach the grassroots. Community forestry programmes have been very effective, but in many national forests neither adequate boundary adjudication/demarcation nor protection has been possible. For other government and public land, no custodian organization has been entrusted with their maintenance and protection.

Nepalese society is very politically motivated. Most of the citizens, civil society and even non-governmental organizations (NGOs) focus much of their attention on the major political issues of the country. However, adequate concern for environmental issues and the protection of the government and public land is missing from their agenda. Very recently, a few NGOs have started to focus on these issues, more specifically promoting land rights and land reform issues. However, their interest in the overall management of land and the protection of government and public land is not pronounced.

CONCLUSIONS

There are several reasons for encroachment on government and public land in Nepal and the problems concerning their protection and maintenance and the overall management of land. As the key government organization responsible for policy formulation and guidance, the Ministry of Land Reform and Management has a role to play in this respect. It is necessary that the ministry take steps to make available reliable and transparent records of government and public land to citizens, NGOs and other governmental organizations. It is also important that an integrated land act be formulated and that duplication of responsibility be avoided. A clear distinction should be made between the custodian and support for the collection, updating and maintenance of government and public land records. A structural re-organization of the ministry should also be made and a new department for the custodianship of government and public land should be established. This new department of government and public land under the Ministry of Land Reform and Management should maintain and update the records on such lands. It should also ensure that no encroachments on such lands are made and that they are physically maintained. Such an organizational set-up will fill the vacuum of the custodian organization. However, adequate legal instruments, authority, personnel and infrastructural resources should be entrusted to this department so that it can perform its duty of policing the encroachment on government and public land. It is hoped that, after these interventions and reforms, Nepal will be better placed to prevent encroachment and to maintain and protect government and public lands.

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FAO/G. DIANA

Register of the State Domain: essential infrastructure for public land management

There has been increasing demand for land-related infrastructure in recent years. The developed countries wish to modernize their often ageing systems, while the developing or transition countries wish to set up such systems.

Many ministries and bodies grant or acquire rights over public land in Quebec (Canada), mainly for natural-resource use, or else impose constraints. Information on those rights is spread among ten registers scattered among different ministries and bodies. The Ministry of Natural Resources and Wildlife has undertaken to modernize the registration of rights on public land by establishing the Register of the State Domain. This public register is accessible on the Internet and gives complete, accurate and up-to-date information to all players in the State domain.

The new register radically changes the registration of rights systems, which generally have two components: one graphical, which shows the objective of the right, and the other descriptive, which spells out the right concerned. The Register of the State Domain introduces major change not only by merging these two components into a single register, but also by using geomatics, electronic signature and the Internet for both the registration and the consultation of rights.

El Registro de las Tierras Estatales: una infraestructura esencial en la gestión del territorio público

Desde hace algunos años se observa un fuerte incremento de la demanda de infraestructuras territoriales. Los países desarrollados desean modernizar sus sistemas, a menudo seculares, en tanto que los países en desarrollo o en transición se esfuerzan por implantar dichos sistemas.

En todo el territorio público de Quebec (el Canadá) muchos ministerios y organismos conceden o adquieren derechos, ligados principalmente a la explotación de recursos naturales, o establecen restricciones. La información referente a estos derechos se halla dispersa en una decena de registros repartidos en diversos ministerios y organismos. El Ministerio de Recursos Naturales y Faunísticos emprendió la modernización del registro de derechos sobre las tierras de titularidad pública creando el Registro de las Tierras Estatales. Accesible en Internet, este registro público proporciona a todos los operadores que actúan en las tierras estatales información completa, fiable y actualizada.

El nuevo Registro revoluciona los sistemas de registro de derechos, que están generalmente constituidos por dos componentes: uno geométrico, que muestra el objeto del derecho, y el otro descriptivo, que presenta el enunciado del derecho. El Registro de las Tierras Estatales introduce un cambio importante no sólo al fusionar estos dos componentes en un mismo registro de carácter único, sino también sirviéndose de la geomática, la firma electrónica e Internet, tanto para el registro como para la consulta de los derechos.

Le Registre du domaine de l'État: une infrastructure essentielle dans la gestion du territoire public

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Depuis quelques années, la demande concernant les infrastructures foncières connaît une forte hausse. Les pays développés souhaitent moderniser leurs systèmes, souvent séculaires, tandis que les pays en développement ou en transition s'efforcent d'en implanter. Cette popularité accrue résulte du constat qu'une telle infrastructure constitue un important facteur de développement durable.

Sur tout le territoire public québécois, nombre de ministères et organismes consentent ou acquièrent des droits, liés principalement à l'exploitation des ressources naturelles, ou alors établissent des contraintes. L'information relative à ces droits est dispersée dans une dizaine de registres répartis dans divers ministères et organismes. Le Ministère des ressources naturelles et de la faune a entrepris de moderniser l'enregistrement des droits sur le territoire public en établissant le Registre du domaine de l'État. Accessible sur Internet, ce registre public fournit à tous les acteurs œuvrant dans le domaine de l'État, des informations complètes, fiables et à jour.

Le nouveau Registre du domaine de l'État révolutionne l'enregistrement des droits. En effet, les systèmes d'enregistrement des droits sont généralement constitués de deux composantes: l'une géométrique, qui montre l'objet du droit, et l'autre descriptive, qui présente l'énoncé du droit. Le Registre du domaine de l'État introduit un changement important non seulement en fusionnant ces deux composantes en un seul et même registre, mais également en ayant recours à la géomatique, à la signature électronique et à l'Internet, et ce, à la fois pour l'enregistrement et pour la consultation des droits.

INTRODUCTION

Depuis plusieurs années, la demande entourant les infrastructures foncières connaît une forte hausse. Les pays économiquement développés souhaitent moderniser leurs systèmes, souvent séculaires, tandis que les pays en développement ou en transition économique s'efforcent d'en implanter. Cette popularité accrue résulte du constat qu'une telle infrastructure constitue un important facteur de développement durable et contribue à une saine gouvernance territoriale.

En principe, une telle infrastructure devrait couvrir l'ensemble du territoire. Toutefois, en pratique, la plupart des États privilégient la mise en place des systèmes de publicité foncière couvrant le territoire privé, négligeant ainsi le territoire public. Ce choix malheureux prive l'État de revenus importants provenant de l'exploitation des ressources naturelles et d'une gestion efficiente et transparente des droits d'utilisation et des contraintes qui s'y exercent.

GESTION DES DROITS FONCIERS AU QUÉBEC

Au Québec[1], il y a longtemps que l'État se préoccupe de la protection des droits fonciers, et c'est d'ailleurs cela qui a conduit les autorités gouvernementales à mettre en place le système d'enregistrement des droits en 1841, et par la suite le cadastre en 1860.

La protection des droits est donc une mission que l'État québécois s'est attribuée;

[1] Le Québec est la plus grande des 10 provinces canadiennes. Il a une superficie de près de 1,7 million de kilomètres carrés, soit plus de trois fois la superficie de la France et une fois et demie celle de la Colombie. La majeure partie du territoire (92 pour cent) est de propriété publique. Les terres privées sont essentiellement regroupées dans le sud du territoire, où vit la majorité des 7,5 millions de Québécois.

néanmoins, il remplit cette mission de façon différente selon qu'il s'agit de la portion privée ou publique du territoire, car les règles de droit qui s'appliquent varient. La partie privée du territoire est en effet soumise au droit civil qui régit les rapports entre les individus, alors que le territoire public est soumis au droit administratif qui gouverne les rapports entre l'État et les individus.

L'État témoin et gardien des droits fonciers privés

Pour ce qui est de la portion privée du territoire, l'État a un rôle de témoin et de gardien des droits: il fournit aux propriétaires et aux titulaires de droits fonciers l'infrastructure qui permet à chacun de publier ses droits et de les protéger.

Le système de protection des droits en vigueur au Québec est unique. D'une part, contrairement à celui des États de droit anglo-saxon, le système d'enregistrement québécois comporte un cadastre. Cette particularité résulte du fait que le Québec est la seule province canadienne dont la population soit majoritairement d'origine française et la seule où le droit privé soit codifié[2]. D'autre part, le système d'enregistrement québécois est d'inspiration britannique. Ces deux systèmes, qui sont aujourd'hui regroupés dans le Registre foncier, assurent donc la protection des droits collectifs, grâce à leur cadastre d'inspiration européenne et la protection des droits individuels, dans le cadre d'un mode d'enregistrement des droits d'origine britannique.

Les règles qui régissent le Registre foncier sont énoncées dans le Code civil du Québec et elles s'appliquent de la même façon partout sur le territoire[3]. Le Code prescrit un système de publicité des droits fondé sur le plan cadastral et constamment mis à jour. Le plan cadastral est le support matériel du livre foncier, qui est lui-même le support juridique de la publicité des droits[4]. Tout immeuble y est désigné par un numéro et représenté graphiquement; on y indique ses mesures, sa contenance, ses limites, et on le situe par rapport aux autres immeubles qui l'entourent.

Le plan cadastral représente l'assise sur laquelle s'exercent les droits réels immobiliers. Il sert de base à la publicité de ces droits et il est présumé exact[5]. Il s'agit néanmoins d'une présomption simple qui peut être renversée par la preuve du contraire.

Les moyens mis en place pour protéger les droits fonciers jouent un rôle majeur dans le développement et la stabilité économique du Québec. En plus de permettre aux municipalités de percevoir des taxes foncières indispensables pour offrir aux citoyens des services publics de qualité, le système de protection des droits contribue à protéger, sur le domaine privé, une valeur foncière de 601 milliards de dollars canadiens (475 milliards d'USD).

L'État propriétaire du territoire public

Au Québec, le domaine de l'État couvre 92 pour cent du territoire. Ce territoire immense génère 50 pour cent de l'activité manufacturière, 30 pour cent des emplois directs, indirects et induits, et 10 pour cent de l'activité économique totale, soit 26 milliards de dollars canadiens (21 milliards d'USD).

Sur les terres publiques, l'État, fiduciaire de tous les Québécois, agit à titre de propriétaire et, par conséquent, nul ne peut s'approprier un bien public ou agir sur le territoire sans y avoir été autorisé. Compte tenu du grand nombre de ministères et d'organismes impliqués dans la gestion du territoire, l'État doit être parfaitement conscient des droits qu'il accorde et acquiert et il doit savoir où ils se situent.

[2] Le Code civil québécois est inspiré du Code Napoléon français alors que le reste du Canada est placé sous le régime de la Common Law.

[3] Au Québec, le système de publicité des droits et le système cadastral sont établis par l'État et ont une portée nationale. Toutefois, des processus organisationnels permettent aux municipalités de recevoir systématiquement les données cadastrales et celles relatives aux transactions immobilières. Cela leur permet d'établir et de tenir à jour leur système de fiscalité foncière.

[4] Commentaires du Ministre de la Justice – Le Code civil du Québec, Tome ll, p. 1910.

[5] Code civil du Québec, Art. 3027.

Or, jusqu'à récemment, les moyens dont disposait l'État ne lui permettaient pas d'obtenir un portrait complet et fiable de l'information foncière sur le territoire public, notamment parce que celle-ci était dispersée et difficilement accessible. En effet, les ministères et les organismes autorisés à acquérir ou à accorder des droits sur le territoire public enregistraient et consignaient l'information dans une dizaine de registres sectoriels, ce qui rendait longue et fastidieuse la réalisation d'un portrait fiable de la situation foncière d'un territoire donné.

Le Registre du domaine de l'État

Pour remédier à cette situation, le Ministère des ressources naturelles et de la faune (MRNF) a confié au Bureau de l'Arpenteur général du Québec le mandat de mettre en place et de tenir à jour le Registre du domaine de l'État (RDE) dont les principaux objectifs sont:

- être la source officielle, complète, fiable et à jour de l'information foncière du domaine de l'État;
- favoriser une gestion cohérente du territoire public et éviter l'octroi de droits conflictuels;
- favoriser une meilleure protection des droits accordés et des territoires à statuts particuliers établis par l'État;
- faciliter l'accès à la connaissance foncière du territoire public;
- contribuer à une meilleure efficience à l'échelle gouvernementale.

Ce nouveau registre fournit les informations suivantes:

- le caractère privé ou public du territoire (voir figure 1);
- pour les terres publiques, le nom du ministère ou de l'organisme qui en a l'autorité;
- les transactions de propriétés de l'État (via un lien automatisé avec le Registre foncier du Québec (registre où sont consignés les droits fonciers privés);
- les droits d'intervention accordés et les territoires à statuts juridiques particuliers établis par l'État sur son territoire ou sur une terre privée (représentés géométriquement et localisés géographiquement)[6]; tous les arpentages officialisés après la mise en place du nouveau registre;
- les données archivées de l'ancien Registre terrier auquel succède le nouveau registre.

[6] Le nouveau registre fournit ainsi une perspective intégrée de l'ensemble des droits et contraintes affectant le domaine de l'État, soit plus de 340 000 droits et contraintes et aires protégées.

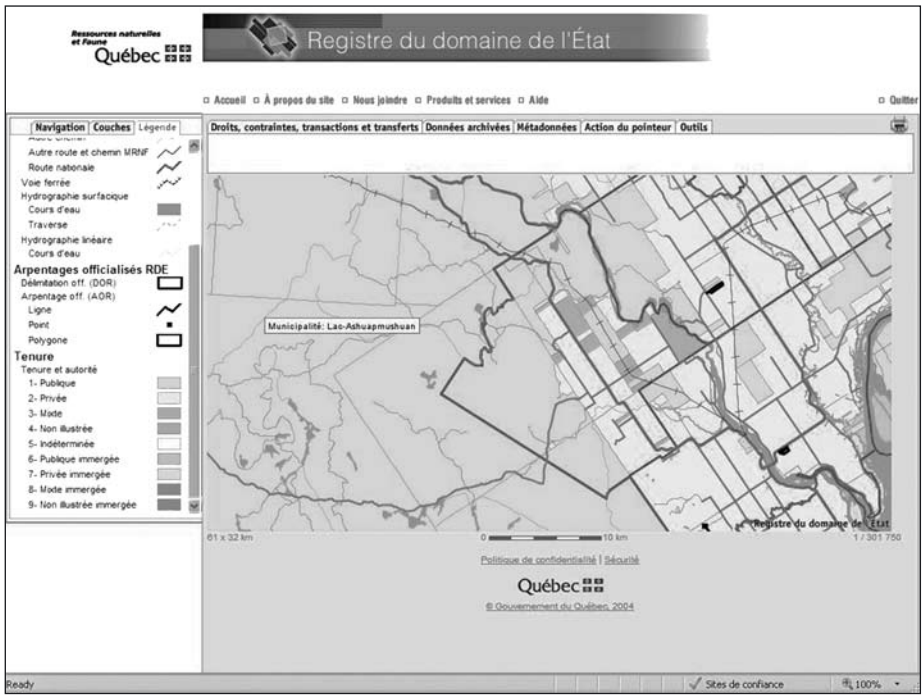


FIGURE 1
Le Registre du domaine de l'État fournit l'information sur le caractère privé ou public du territoire

Les principales caractéristiques du nouveau registre sont les suivantes:

- accès simple (Internet) et sécuritaire (infrastructure gouvernementale à clés publiques);
- alimenté sur une base continue par les ministères et organismes émetteurs de droits/contraintes;
- alimenté par le Registre foncier et le cadastre pour les acquisitions et les aliénations faites par l'État;
- accès basé sur la référence spatiale et non plus sur un numéro de lot ou une autre désignation territoriale.

En outre, l'information contenue au RDE peut être localisée en fonction des données de référence territoriale suivantes:

- les frontières du Québec;
- la compilation des arpentages;
- les lots du cadastre du Québec;
- les entités administratives (régions administratives, circonscriptions foncières, municipalités, etc.);
- les données planimétriques et hydrographiques des couvertures cartographiques à différentes échelles.

Le RDE a été développé en respectant les principes suivants:

- Les ministères et organismes émetteurs doivent s'assurer de la légalité et de la compatibilité des droits et contraintes qu'ils accordent ou établissent et ce, en fonction des autres droits. Ils doivent également conserver les documents qui les attestent et les décrivent en détail.
- Le RDE ne consigne que les données sommaires concernant les droits ou contraintes, y compris leur localisation.
- Les demandes d'enregistrement doivent provenir d'émetteurs dûment enregistrés au RDE. Une modification à une contrainte ou à un droit existant ne peut être effectuée que par l'émetteur de cette contrainte ou de ce droit.
- Les demandes d'enregistrement doivent être conformes aux spécifications d'échange établies et signées électroniquement, et ce, conformément à l'infrastructure gouvernementale à clés publiques. Cette signature donne une force probante au registre et assure la non-répudiation des droits et contraintes qui y sont consignés. Cette signature est appliquée aux courriels transmis par l'utilisateur ou le système de l'émetteur.

Un exemple concret de cadastre 2014

Le nouveau RDE révolutionne l'enregistrement des droits. En effet, les

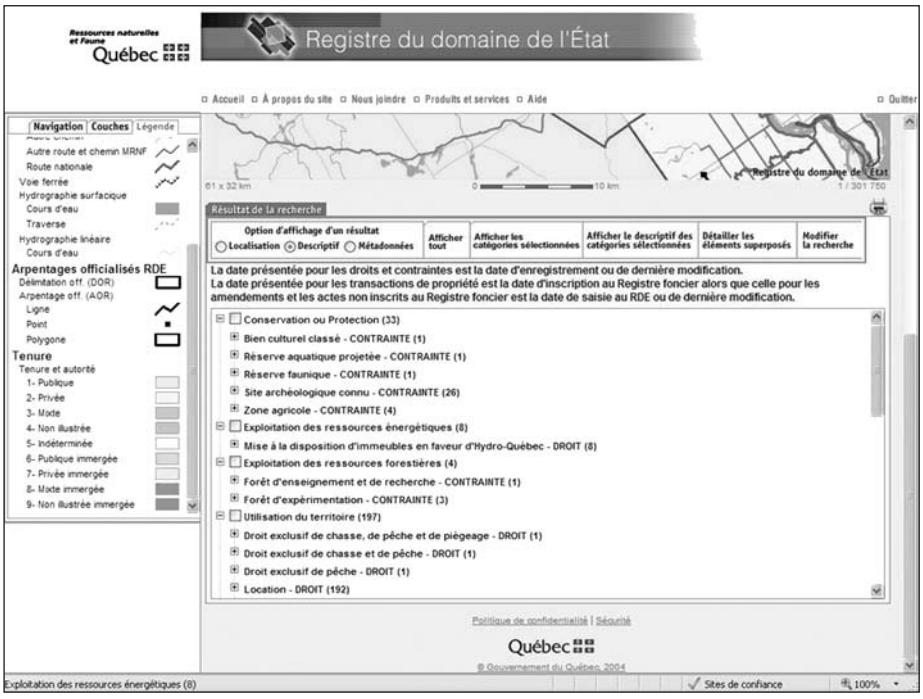


FIGURE 2
Liste des droits, contraintes, territoires protégés, etc., affectant une portion donnée du territoire

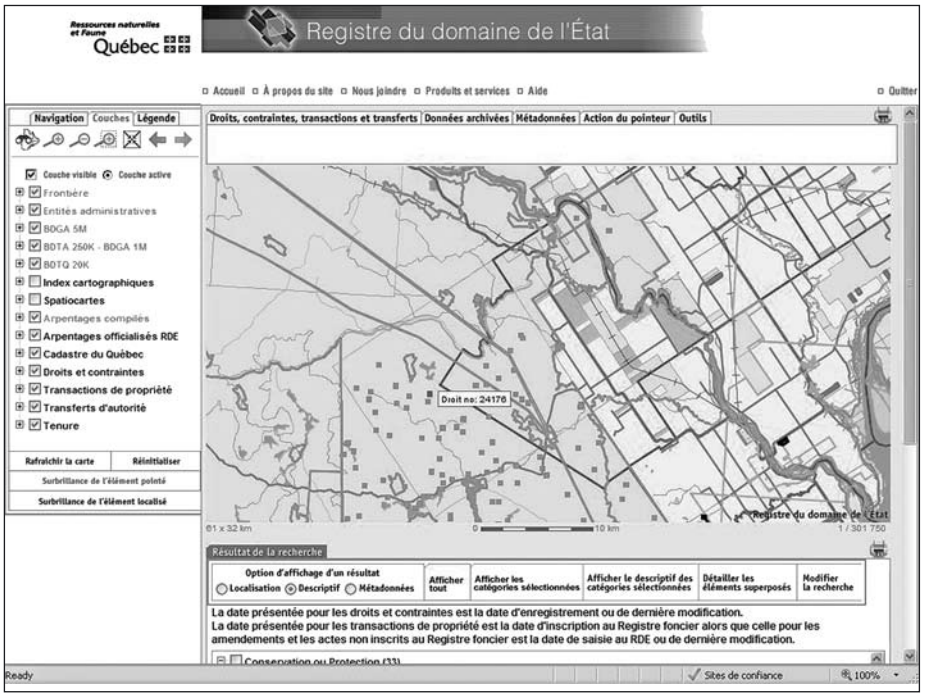


FIGURE 3
Localisation des droits et contraintes affectant une portion du territoire public

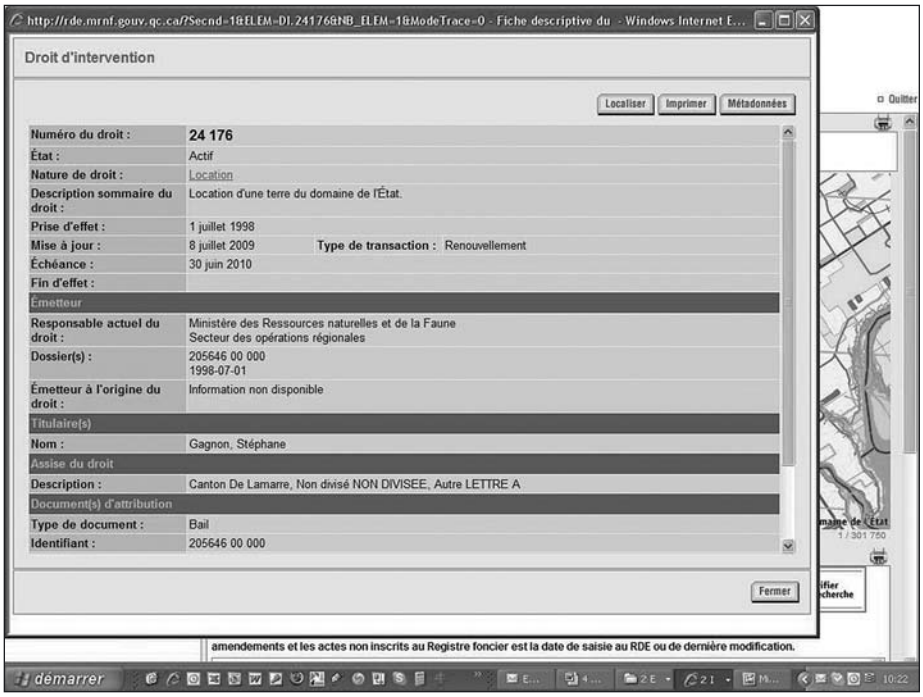


FIGURE 4
Exemple de données descriptives relatives au droit (bail de villégiature) consigné au Registre du domaine de l'État sous le numéro 24 176 localisé à la figure 3

systèmes d'enregistrement des droits sont généralement constitués de deux composantes, l'une géométrique, qui montre l'objet du droit, et l'autre descriptive, qui présente l'énoncé du droit. Le RDE innove non seulement en fusionnant ces deux composantes en un seul et même registre, mais également en ayant recours à la géomatique, à la signature électronique et à l'Internet, tant pour l'enregistrement que pour la consultation des droits.

La Commission 7 de la Fédération internationale des géomètres (FIG) a imaginé le cadastre du futur, appelé Cadastre 2014; il s'agit d'un cadastre qui indique la situation légale complète du territoire, y compris les droits et les restrictions de droit public et abolit la

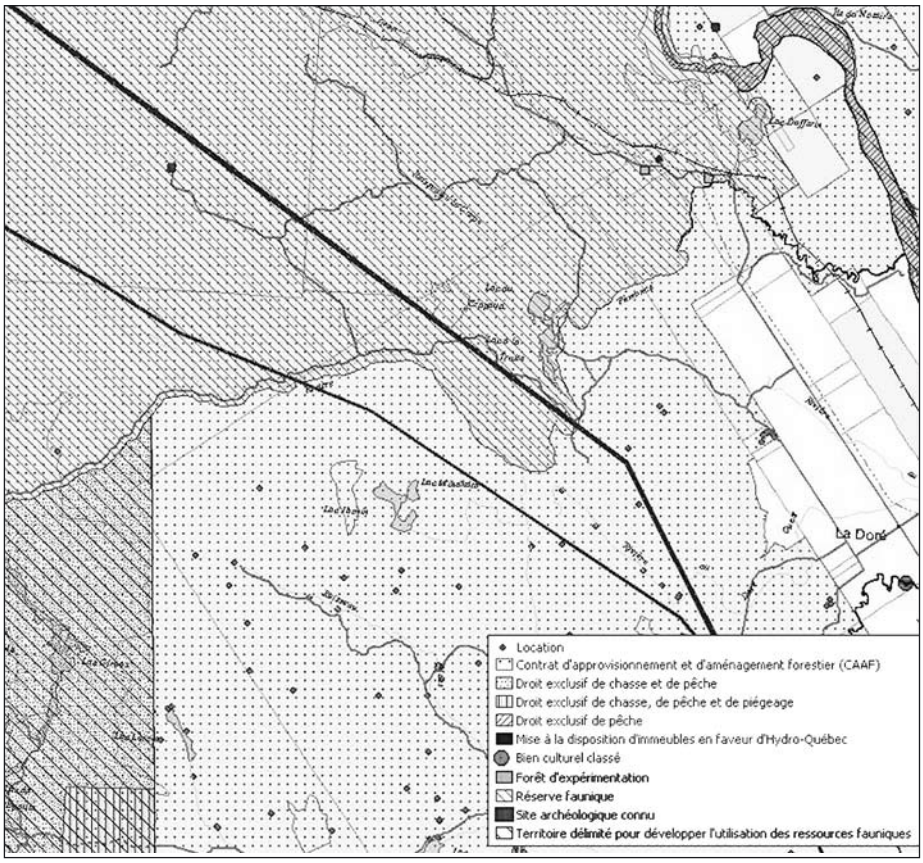
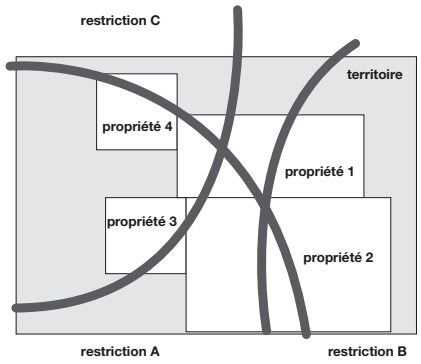


FIGURE 5
Compilation de l'ensemble des droits, contraintes et territoires protégés affectant une portion de territoire



Le Cadastre 2014 indiquera la situation légale complète du territoire, y compris les droits et les restictions de droit public. Le RDE s'inscrit parfaitement dans cette vision.

Commentaire: La population du monde est en pleine croissance. La consommation du territoire est en augmentation. Le contrôle absolu de l'individu et ou des entités foncières légales est en train d'être restreint: d'une manière croissante par l'intérêt public. Pour garantir la sécurité du titre de propriété, tous les faits relatifs au territoire doivent être mis en évidence par le système cadastral de l'avenir.

Conséquences: Un nouveau modèle thématique est nécessaire. Les géomètres doivent prendre en considération le droit public.

FIGURE 6
Point de vue du Cadastre 2014

séparation entre les cartes et les registres. Le RDE est donc un exemple concret du Cadastre 2014[7] à l'égard du domaine de l'État. En effet, pour un secteur donné du territoire public, il est désormais possible de connaître la localisation et la configuration des droits accordés par l'État, les restrictions d'usage et toutes les aires protégées et ce, à l'écran par le biais d'Internet. En outre, on peut visualiser les lots du cadastre à proximité et consulter les transactions de propriété mettant en cause les ministères et organismes du gouvernement du Québec.

Un travail colossal

Pour réaliser la mise en place du RDE et le développement du système informatique qui le supporte, une foule d'activités et biens livrables ont été nécessaires. À noter, entre autres:

[7] Source FIG: www.fig.net/cadastre 2014

Pour le domaine d'affaires

- la planification globale et détaillée du projet;
- l'intégration des préoccupations relatives à l'accès à l'information et à la protection des renseignements privés;
- la détermination des droits à inclure au Registre;
- l'élaboration des modifications législatives requises;
- l'élaboration et la mise en œuvre de stratégies et de plans pour:
  - la gestion du changement pour le personnel et les émetteurs de droits;
  - l'adhésion des émetteurs de droits au Registre;
  - la préparation des données pour le chargement initial du Registre par les émetteurs;
  - la réalisation de la solution systémique devant supporter le Registre; et
  - la mise en ligne du site Web.

Pour le développement du système informatique

- l'élaboration de l'architecture globale (travail, traitements, données, technologie);
- l'acquisition, la mise en place et la gestion de l'infrastructure technologique;
- le développement, l'exploitation et l'entretien du système;
- l'adaptation des systèmes des émetteurs de droits;
- l'adaptation des systèmes supportant les autres registres pour permettre les échanges avec le RDE: cadastre, Registre foncier.

Résultats obtenus

Malgré son implantation récente, le Registre du domaine de l'État procure déjà de nombreux bénéfices aux utilisateurs. À noter que, même si le MRNF en a réalisé les principaux investissements, ce sont les ministères et organismes gestionnaires du territoire public et émetteurs de droits qui en sont les principaux bénéficiaires.

Simplification des processus

De nombreux ministères et organismes planifient l'utilisation du territoire. À cette fin, chaque équipe responsable devait auparavant rechercher, documenter, localiser et cartographier l'information foncière avant d'émettre un droit. Désormais, le Registre fournit à tous cette connaissance mise à jour. Chaque ministère ou organisme peut ainsi se concentrer davantage sur les activités de son domaine d'affaires, laissant au MRNF la tenue à jour intégrée de la connaissance foncière.

Gain de productivité

Les équipes responsables de la planification du territoire dans les divers ministères et organismes peuvent dorénavant se concentrer sur leur mission première. Plusieurs émetteurs de droits améliorent également leur productivité en automatisant la transmission de leurs demandes d'enregistrement de nouveaux droits.

Amélioration de la cohérence des actions gouvernementales

À chaque demande d'enregistrement d'un nouveau droit, le Registre en valide la superposition spatiale avec tous les autres droits présents et en avise le demandeur. Celui-ci peut alors intervenir pour éviter toute situation de droits conflictuels.

Amélioration de l'accessibilité de l'information

Tous les intervenants gouvernementaux ont accès au Registre par l'Internet. Outre la consultation, ils peuvent aussi y commander des données géomatiques structurées pour les importer dans leurs propres systèmes. Le grand public pourra également, lorsque le chargement initial des données sera complété, avoir accès au Registre.

Amélioration de la fiabilité de l'information

Étant transmise par Internet, chaque demande d'enregistrement d'un droit doit désormais être signée électroniquement par l'émetteur de ce droit. On assure ainsi la fiabilité et l'intégrité des données

consignées au Registre, tout en maintenant la responsabilité de chaque émetteur quant à l'enregistrement.

Amélioration de la prestation de services

Dans le temps, effectuer une recherche dans le registre Terrier (registre public où étaient consignés les droits fonciers cédés ou obtenus par l'État) était une tâche ardue, réservée à quelques experts qui devaient nécessairement connaître le numéro du lot visé par le territoire d'intérêt. Ce n'est plus le cas avec le nouveau registre. Sur Internet, à partir d'une carte du Québec, l'utilisateur peut choisir la région et le secteur qui l'intéressent et visualiser des cartes de plus en plus détaillées. Il peut ensuite y rechercher les droits présents, car ceux-ci sont enregistrés selon leur position en coordonnées sur le territoire (géoréférence).

Possibilités nouvelles

L'implantation de liens avec les systèmes informatisés du cadastre et du Registre foncier permet au MRNF de réaliser des tâches auparavant impossibles, comme l'inventaire de toutes les propriétés foncières de l'État. On peut ainsi connaître et localiser toutes les transactions réalisées par les nombreux ministères et organismes responsables.

Alliances stratégiques

Avec les ministères et organismes émetteurs

L'adhésion au projet de tous les émetteurs de droits répartis dans les différents ministères et organismes du Gouvernement du Québec était incontournable. Le MRNF a convenu avec chacun de la préparation et du chargement initial des droits déjà actifs et de l'enregistrement des nouveaux droits. Il a également aidé certains émetteurs à adapter leurs systèmes informatiques et supporté une part importante des coûts de cette adaptation.

Avec les arpenteurs-géomètres

La mise en place du nouveau registre entraîne des changements dans la manière d'agir des arpenteurs-géomètres en cabinet privé qui effectuent des arpentages sur le territoire public. Le Bureau de l'arpenteur général du Québec du MRNF a convenu avec l'Ordre des arpenteurs-géomètres des moyens à prendre pour faciliter ces changements.

Une organisation intégrée

Depuis 2000, le cadastre, le Registre foncier et le Bureau de l'arpenteur général du Québec font partie d'une seule et même organisation – Foncier Québec – au sein d'un même ministère, le Ministère des ressources naturelles et de la faune. Auparavant, le Registre foncier était sous la responsabilité du Ministère de la justice.

Cette intégration sous une même gouverne des trois lignes d'affaires a facilité grandement l'accès aux données de cadastre et du registre foncier et le développement de liens inter-systèmes.

PERSPECTIVES

Dans son plan stratégique, le Ministère des ressources naturelles et de la faune s'est donné comme objectif de compléter, d'ici 2011, le chargement initial au Registre du domaine de l'État de tous les droits et territoires à statuts juridiques particuliers en vigueur. Au terme de cet exercice, le Québec sera doté d'une infrastructure foncière officielle, complète et à jour, qui assurera une gestion judicieuse de son vaste territoire public et de la grande diversité d'usages qui s'y exercent et ce, au bénéfice de tous ses citoyens.

Ce registre unique au monde pourrait devenir une source d'inspiration pour d'autres juridictions où le territoire public est, comme c'est le cas au Québec, au cœur du développement durable.

Avec la mise en place du Registre du domaine de l'État, le Québec complète son infrastructure foncière couvrant désormais autant le territoire privé que le domaine de l'État.

FAO/M. P. TÖRHÖNEN

Options pour la gestion des terres domaniales dans les zones rurales de l'ex-République yougoslave de Macédoine

L'objectif primordial de l'ex-République yougoslave de Macédoine est d'adhérer à l'Union européenne. Les questions relatives aux marchés fonciers et à l'agriculture sont liées à cet objectif. La superficie totale des terres agricoles du pays est d'environ 700 000 ha, dont 200 000 ha appartiennent à l'État. En 2007, le gouvernement a sollicité l'aide de la FAO pour améliorer la gestion des terres agricoles domaniales. Une analyse préliminaire a été faite et différentes options ont été identifiées. Il n'existe pas toutefois d'option simple. Près de la moitié des terres sont déjà louées à des agriculteurs privés au titre de baux qui compliquent leur gestion par le gouvernement et n'encouragent pas l'investissement. Même si l'on peut améliorer les systèmes de gestion, les revenus fonciers ne seront jamais considérables à l'échelle nationale. Cet article présente trois options, mais il examine en particulier une nouvelle démarche consistant à vendre les terres aux locataires actuels contre le versement d'une prime de reprise.

Opciones para la gestión de las tierras estatales en las regiones rurales de la ex República Yugoslava de Macedonia

El objetivo principal de la ex República Yugoslava de Macedonia es la adhesión a la Unión Europea. Para conseguirlo, la agricultura y los mercados de la tierra son factores importantes. La superficie total de tierras agrícolas del país es de unas 700 000 ha, de las cuales 200 000 ha son propiedad del Estado. En 2007 el Gobierno solicitó ayuda a la FAO con el objetivo de mejorar la gestión de la tierra agrícola propiedad del Estado. Se ha realizado un análisis inicial y se han determinado las diferentes opciones. Sin embargo, no existen opciones sencillas. Aproximadamente la mitad de las tierras se han cedido a agricultores particulares con contratos de arrendamiento que suponen una carga de gestión para el Gobierno y no estimulan la inversión. Aunque los sistemas de gestión pueden mejorarse, los ingresos que generan las tierras nunca serán significativos a nivel nacional. En este artículo se describen tres opciones, pero en concreto se examina una actuación alternativa que consiste en vender las tierras a los arrendatarios en posesión por una única prima.

Options for the management of state land in rural areas of The former Yugoslav Republic of Macedonia

S. Keith, K. Georgievski and K. Mlitic

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The overarching goal of The former Yugoslav Republic of Macedonia is to join the European Union. Matters relating to land markets and agriculture are relevant to this goal. The total area of agricultural land in the country is about 700 000 ha, of which 200 000 ha are owned by the state. In 2007, the government sought help from FAO with a view to improving the management of the state-owned agricultural land. The initial analysis has been made and the options identified. However, there are no simple options. About half of the land has already been let to private farmers under lease terms that create a management burden for the government and do not encourage investment. Although the management systems can be improved, the revenue from the land will never be nationally significant. This article identifies three options, but in particular it examines an alternative course of action of selling the lands to the sitting tenants for single premiums.

INTRODUCTION

With a gross national income per capita of about US$2 830 per year in 2005, The former Yugoslav Republic of Macedonia is a lower-middle-income country. It is located in the southwest of the Balkan Peninsula. It is landlocked with borders with Albania, Bulgaria, Greece and Serbia. Its total land area is 25 713 km^2, which is equivalent to 6 percent of the land area of the European Union (EU-25), and about the size of Belgium. Although landlocked, The former Yugoslav Republic of Macedonia is at the crossroads of two major pan-European transport corridors linking link Central Europe to the Adriatic, Aegean and Black Seas.

The country has come a long way in its transition from a centrally planned to a market economy. Progress in this area in recent years has certainly paid off, with the economy picking up and unemployment and poverty showing signs of declining. However, much remains to be done to create an environment that will create well-paid and stable jobs through private-sector-led growth.

The overarching goal of The former Yugoslav Republic of Macedonia is to join the European Union (EU). It was the first country to sign the Stabilization and Association Agreement with the EU in April 2001 and the most recent country to receive EU-candidate-country status (November 2005). Negotiations on membership started in 2007.

With the signing of the Stabilization and Association Agreement, The former Yugoslav Republic of Macedonia took the responsibility to harmonize its legislation with the EU Acquis Communautaire and since 2001 it has been implementing such a national programme.

After being granted the status of a candidate country, the obligations and responsibilities of the Government of The former Yugoslav Republic of Macedonia for adjusting the agrofood sector to the

Common Agriculture Policy (CAP) of the EU have become ever more important.

In light of this, the Ministry of Agriculture, Forestry and Water Economy (MAFWE) has initiated a process of reform for harmonization of the agricultural and rural sector with the CAP. Improvement in the management of the agricultural land, land legislation and registration systems will be a significant part of this process. At present, the weak land market keeps feeding the process of fragmentation of production into small lots and does not allow greater modernization of the agriculture sector. The result is reduced competitiveness of the producers.

This article has been written as a consequence of the first stage in an FAO technical cooperation project requested by the government to support improvements in the management of state agricultural land. The facts were gathered during a mission in autumn 2007 by the authors, using a study done by Professor Vanco Georgiev (FAGRICOM).

THE NUMBERS

The total area of "agricultural" land in The former Yugoslav Republic of Macedonia is 687 000 ha,[1] but this figure excludes about 600 000 ha of mainly upland grazing land and which is not the subject of this article. Most of the agricultural land in The former Yugoslav Republic of Macedonia is, and always has been, in private ownership. The structure and pattern of private ownership is of concern because the average size of landholding is 2.5–2.8 ha in scattered parcels of 0.3–0.5 ha, so not suitable for modern agriculture

According to the MAFWE, 197 764 ha of agricultural land remain in public ownership. Generally, this is agricultural land without any buildings on it (as the agricultural buildings have been dealt with separately). About half of this area has now been leased and it is estimated that there may be about 1000 separate leases.

[1] The correct figure may now be 545 514 ha. However, this does not affect the conclusions in this report.

EXISTING SITUATION

Policy

We are not aware of any formal statement of policy relating to the management of state-owned agricultural land, nor are we aware of any informed debate on its management. The public ownership of the 200 000 ha of land would appear simply to be an inheritance from the previous socialist regime rather than the result of any clear policy. The actions taken over the last five years appear to be motivated mainly by the sensible desire to keep as much agricultural land as possible in production. The drive for the large-scale leasing programme of the last five years seems to come from local demand from farmers seeking to increase the size of their farms. Clearly, at a higher level the Government of The former Yugoslav Republic of Macedonia is in the process of making the agricultural industry and the land markets ready for EU accession.

Practice

In the last decade, 100 000 ha of land have been let and hundreds of leases have been created. The administrative burden of carrying out this work should not be underestimated. It was mostly carried out with the equivalent of one person at the headquarters of the MAFWE, support from the 33 extension offices and much work from local statutory empowered "commissions" appointed by the Minister of Agriculture. Whatever may be the shortcomings of the leasehold tenure created (see below) or the irregularities that may have occurred during the processes, it is nevertheless a considerable administrative achievement. The work is now to be controlled by a newly established section in the MAFWE. The relative responsibilities of the extension offices and those of the commissions were not made clear to us and we suspect that these need to be defined.

The mechanism for demanding and collecting the rents and enforcing payment has not been properly developed. It appears to depend mainly on the local knowledge

of the extension offices.[2] Payments are made to the Ministry of Finance through a bank and the mechanisms for this are well designed and work well. In autumn 2007, the MAFWE had no figures to show the amount of the annual rent that should be collected, how much had been collected and the location and quantity of the arrears.

The law

The main statute governing the management of state-owned agricultural land is the Law on Agricultural Land (MAFWE, 2007). There is concern that this newly created law does not provide a sound basis for the better management of state-owned agricultural land. It is not so much the detail of the law that causes concern but the entire philosophy that appears to underpin it. It appears to be predicated on the assumption that farming will remain unchanged in method and tenure. Some of the concerns are identified by these comments:

- Article 5 confines the use of agricultural land to exactly that in the record of cadastre.
- Article 17 bars the sale of state-owned agricultural land.
- Article 18 defines the classification of users of the land. The length of the term of the lease depends on the user and, consequently, the duration of the term is unnecessarily restrictive.
- Article 39 assumes an extension of the lease at the end of the term but under the same terms as the basic agreement, which is restrictive and unnecessary.

There are administrative articles in this law that are unsatisfactory or contradictory. Consequent on the unsatisfactory statutory framework, the resulting lease documents have the following defects:

- The bar on sale or assignment prevents the lessee from raising money against the security of the leasehold title.
- The bar on sale or assignment excludes all the let land from the property market, thus inhibiting its operation.
- The bar on subletting is probably unenforceable in practice.[3]
- There is an underlying assumption that the tenant will continue to use the land for the specific classified purpose (or purposes) (e.g. arable, vineyard, orchard or meadow). Farming methods, markets and priorities will change in the 30-year term and farmers should have the freedom to farm as they choose.
- There is no provision for compensation to an outgoing tenant at the end of the lease for improvements made to or on the land. Such a provision would encourage lessees to invest. There should also be a mirror-image provision for the tenant to pay for any damage caused to the holding. There appears to be no legal reason why such provisions should not be included in the leases.
- The rental provisions are unusual. They are determined as a proportion of the average wheat yields over the last five years (which commonly equates to 0.3 tonnes/ha) at the wheat price of the previous year. While this provision is ingenious and has the merit of indexing rents in line with one measure of inflation, there are disadvantages. Wheat is not a main staple crop in The former Yugoslav Republic of Macedonia. Denominating the rent of a vineyard, for example, in the terms of wheat prices makes little sense. The fluctuating price of wheat on the world market in the three years 2006, 2007 and 2008 clearly demonstrates the disadvantages of the system.[4]

The overall result is that some 1 000 tenants are holding more than 100 000 ha of agricultural land under terms that provide an unsatisfactory basis for flexible agriculture and exclude that land from the land markets. (It should be noted

[2] The local knowledge of those working in the extension offices is a valuable asset.

[3] There are always legal methods of avoiding the bar on subletting.

[4] The world price of wheat doubled between 2006 and 2007. Thus, in 2007, a vineyard tenant or a livestock farmer might have had to pay double the rent paid in the previous year.

again that this study does not apply to the significant area of "pastureland".[5])

FACTORS RELEVANT TO MANAGEMENT

Agricultural land management is easier and cheaper where the separate holdings are relatively large and the whole is within one ringfence or location. This is not the case in respect of state-owned agricultural land in The former Yugoslav Republic of Macedonia. This land comprises many holdings, some relatively small, in many scattered locations. Therefore, such a pattern of ownership will always be expensive and difficult to manage. Furthermore, a study of a sample area showed that many occupations of the land did not conform to the area specified in the lease documents. This is a consequence of the scattered pattern of ownership, which makes the surveying of boundaries more difficult, and a result of the lack of available land management skills when the leases were created. It is also a general consequence of public ownership. The owners of private lands know and maintain their boundaries. The public sector does not do so in the same way.

On the other hand, in The former Yugoslav Republic of Macedonia, there are generally good cadastral records and the capacity to maintain them (even if imperfect in respect of state ownership in rural areas). There is also a large amount of information on agricultural matters. Moreover, there is the advantage that these lands contain very few buildings under state ownership. Buildings add another dimension to the problems of land management.

Other adverse short-term factors that inhibit good management of state-owned agricultural land include the lack of clear policies, management priorities, experience, resources and training in many aspects of land management. All these factors can be corrected.

INTERNATIONAL EXPERIENCE

Most governments, whether in the developed economies or countries in transition or in the developing world, prove to be inefficient, ineffective and wasteful landowners. Although great improvements were made in the management of public-sector estates from about 1980 onwards (particularly in some of the English-speaking countries), it is difficult to find many examples of good practice in the management of agricultural estates in the public sector. The causes for this widespread failure are known and understood. Any scheme for improving the management of the public-sector estate should therefore have to regard to international experience.

There are valid reasons why governments the world over decide that the state or local government or government-owned bodies should be the owner of land and buildings that are leased or issued to others on a terminable basis. In theory, there are many benefits:

- financial advantages;
- control of the environment for the benefit of the community;
- strategic economic benefit for the community;
- poverty reduction.

All the above are legitimate, indeed admirable, concerns of government and it would be a great benefit to the community if the theoretical advantages could be delivered in practice. The problem is that they generally cannot be. Political

[5] We did not examine the management of "pastureland", a task that is carried out by the public enterprise Pasista. On the basis of knowledge in the public domain and using the experience of those with some knowledge of the situation, we make these general comments. Pastureland amounts to about 600 000 ha. Most of it is upland used for seasonal grazing. A small proportion of it may be lowland that is managed by Pasista simply because it is or was classified as pastureland in the cadastre. Although three times larger in area than state agricultural land, its value and economic importance are significantly lower. However, its environmental importance for The former Yugoslav Republic of Macedonia is no doubt considerable. On the basis of our limited knowledge, we express these opinions:

- We see no advantage in the management of the pasture being separate from that of the state agricultural land and we see many disadvantages. The same methods of land management apply. It makes organizational sense to combine the management of both.
- If we had had the opportunity of examining the management of pastureland, we think it unlikely that we would have recommended the sale of upland pastureland.

TABLE 1

Capital value of state agricultural land, assuming 90 percent let

Value during 30-year lease term		
Rental income per year	€5 550 000	
Years purchase 7 percent for 30 years	11.4	€63 270 000
Value of the reversion in 30 years	€555 000 000	
Deferred 30 years @ 7 percent	0.13	€72 150 000
Total		**€135 420 000**

Note: The calculation makes several crude assumptions, some of which we know to be incorrect. For example, not all the lease terms are for 30 years. The term of the lease and the number of years to the reversion obviously affect the value of each leasehold interest. If the information had been available, it would have been possible to give a much more accurate indication of value. However, we did not have an up-to-date rent roll available with which to carry out such an exercise.

constraints prevent the public sector from receiving the full financial benefit from the rents during the currency of the leases or realizing the vacant possession value at reversion.

The fundamental methods of good land management are known and understood. The techniques and methods that need to be applied to land management in the public sector are identical to those applied in the private sector. Although a shortage of some land management skills in the public sector is a problem in The former Yugoslav Republic of Macedonia, there are no technical issues that cannot, in theory, be solved.

The root of the problem is that the factors required for successful land management are at variance with those required for politics. Good land and estate management requires clear, simple and unambiguous aims and objectives. On the other hand, politics is frequently a matter of compromise, with the politician having to satisfy many people with conflicting interests. This is the politician's job. In summary it is difficult, and sometimes impossible, to reconcile politics with good land management.

We found no reasons that would suggest that the circumstances in The former Yugoslav Republic of Macedonia would be in any way different from those described above.

TOWARDS BETTER LAND MANAGEMENT IN THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

The thesis of this article is that it is impossible to make progress without understanding the practicalities of land management, identifying the realistic options for the future and calculating the financial consequences of the different courses of action. The options are constrained by the practicalities.

Therefore, we have made some approximate calculations of revenues, costs and the approximate values of state agricultural land under different circumstances. The important underlying figures are these:

1. The potential gross annual rental revenue (taking into account the present leases) is less than €5.5 million.
2. The capital value of the state's interest in state-owned agricultural land as let on the basis of the terms of the present concessions is probably less than €150 million (Table 1). This indication of value is the sum of the value of the revenues to be received by the government during the period of the leases and the deferred value of the reversion at the end of the leases.
3. The theoretical open market capital value of the state-owned agricultural land may be about €500 million.[6]

[6] We optimistically assume that the full value of the reversion at the end of the lease would be realizable. In reality, this is unlikely to be possible.

This last theoretical indication of value is not in reality entirely obtainable because half of the land is already let. The creation of the leases has reduced the value of the landowner's interest – in this case the state's interest. However, even if it were not let, the full value could not be realized without flooding the market.

Nevertheless, this figure indicates the underlying potential of the land that can still be released, at least in part. It should be noted that the difference between the figures in points 2 and 3 above is at least €350 million. This hidden value has in part been transferred to tenants due to the favourable terms of the concessions. However, in larger part it represents capital that is unusable at present. The state as owner is not receiving the proper return on its capital. The lessees/concessionaires are prevented from exploiting the full agricultural potential of their land because of the restrictions in the leases. The €350 million therefore represents the "dead capital".[7]

Nevertheless, this figure indicates the underlying potential of the land that can still be released, at least in part. It should be noted that the difference between the figures in points 2 and 3 above is at least €350 million.[8] This hidden value has in part been transferred to tenants through the favourable terms of the concessions. However, in larger part, it represents capital that is unusable at present. The state as owner is not receiving the proper return on its capital. The lessees/concessionaires are prevented from exploiting the full agricultural potential of their land because of the restrictions in the leases. Therefore, the €350 million represents the "dead capital".

THE OPTIONS FOR IMPROVEMENT

Assuming that to retain the status quo is not an advisable course of action, what are the options? We identify three options, of which only two are really viable, and examine the consequences.

[7] We are using the term "dead capital" as in *The Mystery of Capital* by Hernando de Soto.

[8] In reality it may be much greater than this figure.

Option 1: Retain all land and manage it actively

The first option is the retention of all state agricultural land and the introduction of efficient management systems. This is no simple matter. The land management functions are expensive and time-consuming. It is not merely a matter of collecting the rents (which is by no means simple) nor is this primarily a mapping exercise. Many of the functions require individual contact with individual lessees or potential lessees, and this is inevitably time-consuming.

The skills required relate as much to valuation, law and accounting as they do to agriculture and land surveying.[9] Not surprisingly, in other countries the fees charged by private-sector land managers to private owners are seldom less than 10 percent of the total annual rents.[10]

Noting that the most recent estimate (2006) of the rents received is €1.2 million, we estimate that the gross rent roll for state agricultural land is unlikely to exceed €5.5 million per year (on the basis of present prices) and could be significantly less than this.[11]

On the basis of experience elsewhere and with knowledge of the circumstances in The former Yugoslav Republic of Macedonia, we consider that the costs of good land management would amount to not less than 20 percent of the rent totals, which amounts to an annual cost of more than €1 million.[12]

On the most optimistic assumptions, the annual net revenue accruing to the state would be unlikely to exceed €5 million.

[9] These latter skills are already available.

[10] The published accounts of The Crown Estate Commissioners, United Kingdom, show operating costs as being about 12 percent of turnover. There is no reason to suppose that The former Yugoslav Republic of Macedonia can achieve better than this kind of efficiency.

[11] In our calculations of the rental revenue, we assume that the unlet land is of the same quality as that already let. This may not be the case. There may be large areas that are unlettable. The estimate of revenue is likely to be optimistic.

[12] The reasons for supposing that the costs of management would be higher in these circumstances are: (i) the estate consists of many scattered holdings; and (ii) the rents are well below the full rental value.

The main advantage of this option is that it would be better than the status quo. There would be certain, if restricted, revenue streams. The improved management systems would better safeguard the state's interest. However, it is hard to see any real advantages to the state in owning this agricultural land and there are these definite disadvantages:

- The rental revenue will always be small and not significant to the national budget.[13]
- The public ownership of land provides opportunities for political patronage and outright corruption.
- Farmers are more restricted in their freedom to farm under the terms of the present leasehold interest than they would be if they owned the land. The current leasehold tenure strongly inhibits investment and does not facilitate optimal agricultural production.
- There must also be concern that the restrictions on sale and subletting, which could potentially affect up to two-sevenths of the national agricultural land, do not accord with the EU requirements for a functioning land market as specified in Chapter 4 of the Acquis Communautaire.

All these structural defects affect the ability of The former Yugoslav Republic of Macedonia to realize the full potential from its agricultural land. However, the real risks and disadvantages inherent in this option are that the state will simply fail to deliver a system of good land management. If governments throughout the world have so often proved to be inefficient landowners, it might be considered unwise for the government to suppose that any other outcome is likely in The former Yugoslav Republic of Macedonia. However, even if improvements in management were achieved, it would is difficult to manage the state's agricultural estate efficiently because of its fragmented nature.

Therefore, we believe that this option involves a high risk for no potential advantage.

[13] For 2006, the country's gross domestic product was €4 billion and the total tax revenue €971 million.

Option 2: Dispose of all non-operational land

We considered and rejected this option, which would result in the government acting in a completely commercial manner. If the entire estate were owned by a commercial company, it might well decide that it was unmanageable and seek to realize as high a price as possible by selling as soon as possible to the highest bidders. The lands would be offered in lots. The highest price would often be obtainable from lessees who would not wish to have the land sold from under them. The threat of this happening would often induce bids well above the investment value. There is a substantial difference between the investment value and the vacant possession value. When concessionaires/lessees purchase, they then have an asset that is worth the vacant possession value. Therefore, there is every incentive to purchase.

It would be politically impossible for the state to act with commercial ruthlessness in this way, and we have not considered the option in detail.

Option 3: Retain strategic land and dispose of remainder

If the above options have weaknesses and involve risks, is there another option? We believe there is. The government could consider selling state agricultural land on a selective basis. We might suggest outright sales, but it may be that the sale of 99-year leasehold interests for a single premium would be more politically acceptable. The reasons for examining this option are not ideological but purely practical.

In outline, the proposals are:

- All "designated" state agricultural land under lease or concession at a specified date should be offered for sale to the concessionaires/lessees at the investment value.[14] The option for the lessee to purchase would be kept open for three years.

[14] We would favour a simple formula of a multiple of the rent due in the current year. For example, if the premium were fixed at 20 times the rent, the purchaser would be buying the asset at a very advantageous price, acquiring an asset worth at least double the purchase price.

- All state agricultural land would be "designated" as being for sale unless the MAFWE considered it would be required within ten years for a scheme of consolidation of scattered holdings, or for conversion or development for a use other than agriculture, or required for a strategic agricultural purpose, or were land requiring special environmental protection. No upland pastureland would be designated as being for sale.
- After the three-year period, the land that had not been sold would be offered for sale on the open market at its market value but subject to the existing lease/concession.[15] The lands would be grouped or lotted in a way that would best facilitate the sale.
- The state would offer a clean and unchallengeable title to the lands sold and compensate any person who could subsequently show title or claim to it.
- The purchasers of 99-year leasehold terms would be free to sell, lease, mortgage or bequeath the land as they pleased. They would also be free to farm and crop the land without being restricted by the present agricultural classification.
- The state would reserve title to any part of the lands to which there could be privatization claims (possibly normally 15 percent of the area in a convenient location) in order to meet these claims. In the meantime, the purchasers could farm that land freely and it would revert to the purchasers, or their successors in title, if no claim arose within ten years.
- The state would retain the rights to all minerals.[16]
- The state would retain a 50 percent right to any development value arising from a sale or lease of land within ten years of purchase.

[15] The lessees would still be able to purchase their land but now they would have to compete with others.

[16] If minerals were found and worked, there would have to be proper compensation payable to the farmer for the loss of the agricultural interest.

The time scale for the execution of this option would be up to seven years. We consider that such a scheme would take one year to prepare, that about 50 percent the agricultural land would be sold in the first three-year option period, and that a further 25 percent would be sold within the next three years. Even after ten years, there would be a residue of unsold land, possibly 15 percent, that would have to be managed.

There would be a cost to the state at the outset because the administrative machinery needs to be set up. Returns from sales would start to accrue from year two but might not peak before year four. We consider that there could be a net return of €100 million over seven years. If necessary, it could make financial sense for the government to borrow money for the initial expense and to use the proceeds of the sales to re-pay over a period of seven years. However, the financial projections suggest that the exercise might never be in deficit and there would be no need to borrow.

The two main direct advantages for the government in adopting this option are:

- In the long run, it would reduce the MAFWE's management burden;[17]
- The government would raise a significant amount of cash.

The indirect advantages are very much greater. This course of action would put the tenant farmers in direct control of their land with the freedom to farm as they pleased. Thus, they would be better able to compete in the EU. It would facilitate the land market in accordance with the EU entry requirements. A functioning land market would in turn lead to the more rational occupation of farm holdings.

ADMINISTRATION AND ORGANIZATION

The Government of The former Yugoslav Republic of Macedonia is well aware that improvements need to be made to their land management systems and this is exactly why they requested FAO's help. In this article, we have not described the

[17] This statement assumes that 99-year leases would be sold for a single one-off premium and that there would be no annual ground rent to be collected.

detailed systems required for the good management of real estate assets. However, in order to make our analysis, we have had to understand the present systems and consider the necessary enhancements. Whatever course of action is decided upon, the administrative machinery of estate management will have to be improved.

CONCLUSIONS

The area of land considered in this study is small, subject to a single use and relatively homogenous in character. However, we consider that there are general lessons to be learned that are widely applicable for the better management of the public-sector estate.[18]

Policy options are always constrained by what is possible in practice. Therefore, it is necessary to start by identifying the technical and practical problems of the management task that is being considered. The amount of work, the skills and the organizational systems required to manage land and property efficiently are commonly underestimated. The costs are unlikely to be less than 10 percent of the full rental values and frequently a significantly greater proportion of the revenue. An understanding of the practical difficulties is essential.

When considering the management of the public-sector estate in any country, it is sensible to ask two basic questions:

- Why is the land under public ownership and should it remain so?
- What benefits are there for government or for society from retaining the lands and properties under public ownership?

As seen above, in this case we were not able to identify the benefits in relation to state agricultural land in The former Yugoslav Republic of Macedonia. However, our conclusion here should not be taken to suggest that private ownership is always better than public ownership. We advocate a neutral ideological stance with the decisions made on the basis of facts of each case.

[18] The public-sector estate in any country can be categorized in two ways. The first category is "operational land", which includes all lands and buildings held by government for its own use and occupation. Operational land includes many uses: parliament buildings, government offices, military establishments, civil airfields, hospitals and many more. The problems relating to the management and efficient use of operational land are not the same as those relating to other parts of the public-sector estate. In this article, we have not addressed the problems relating to the management of operational land.

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Gestion des terres domaniales et publiques: les moteurs du changement

Partout dans le monde, la gestion des terres publiques se caractérise par sa mauvaise qualité, ainsi que par le gaspillage et la faible productivité qui s'ensuivent. Deux principaux facteurs sont source de changement dans le secteur public: la nouvelle gestion publique et l'introduction de la comptabilité d'exercice. La nouvelle gestion publique implique que des fonctionnaires situés aux avant-postes chargés soient autorisés à déterminer comment les services publics doivent être fournis. Il s'agit de leur donner un pouvoir de décision accru sur la façon de dépenser les budgets, y compris en ce qui concerne les actifs immobiliers. Les autorités centrales définissent les services qui doivent être fournis et formulent et appliquent des normes. Les contrôles hiérarchiques sont réduits et les fonctionnaires aux avant-postes reçoivent des incitations les encourageant à atteindre des objectifs de performance. Le pouvoir en matière d'actifs immobiliers tend à passer entre les mains des fournisseurs de service. La comptabilité d'exercice consiste à comparer les recettes aux coûts liés à leur encaissement, de façon à pouvoir calculer les excédents ou les déficits. Traditionnellement, le secteur public a recours à des systèmes de comptabilité de caisse qui leur permettent de ne pas payer le véritable coût économique des actifs utilisés. Ces changements obligent à s'interroger sur les actifs dont il vaut mieux être propriétaire, et sur ceux dont on devrait plutôt se défaire et si la location n'est pas une meilleure option pour le secteur public. Les pratiques de gestion des actifs s'en trouvent modifiées. Résultat: la gestion des terres publiques a tendance à s'aligner sur les systèmes de gestion du secteur privé.

Gestión de tierras estatales y públicas: factores determinantes del cambio

La gestión de las tierras públicas en todo el mundo se caracteriza por su escasa calidad, así como por los gastos y la baja productividad consiguientes. Existen factores clave que están cambiando el sector público: La Nueva Gerencia Pública y la introducción de contabilidad en valores devengados. La Nueva Gerencia Pública implica el empoderamiento del personal de primera línea para determinar cómo deben prestarse los servicios públicos. Les ofrece mayor poder de decisión sobre el modo de invertir los presupuestos, incluidos los activos de propiedades inmobiliarias. Las autoridades del gobierno central determinan qué servicios deben ofrecerse, establecen los criterios y los aplican. Se han reducido los controles descendentes y se han introducido incentivos para que el personal de primera línea alcance los objetivos de rendimiento. El poder sobre los activos inmobiliarios tiende a pasar a los proveedores de servicios. La contabilidad en valores devengados implica equiparar los ingresos con los costos asociados a los mismos, de modo que puedan calcularse los excedentes y el déficit. Tradicionalmente, el sector público ha utilizado sistemas de contabilidad efectivos, lo cual ha conllevado que no se pague el verdadero costo económico de los bienes que emplean. Estos cambios generan interrogantes sobre qué activos deben adquirirse, de cuáles habría que deshacerse y si el arrendamiento es una opción mejor para el sector público. Las prácticas de gestión de los activos se modifican. Como resultado, la gestión de tierras públicas ha mostrado una tendencia a ajustarse más estrechamente a los sistemas de gestión del sector privado.

State and public land management: the drivers of change

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A feature of the management of public lands throughout the world is its poor quality and resultant waste and poor productivity. Two key drivers are bringing change in the public sector: New Public Management; and the introduction of accruals accounting. New Public Management involves the empowerment of front-line staff to determine how public services are to be delivered. It gives them greater power over how budgets are to be spent, including over real estate assets. The central government authorities determine what services are to be produced and set and enforce standards. Top-down controls are reduced with incentives for front-line staff to achieve performance targets. Power over real estate assets tends to shift to the service providers. Accruals accounting involves matching revenue against the costs of earning it so that surpluses or deficits can be calculated. Traditionally, the public sector has used cash accounting systems, which have resulted in them not paying the true economic cost of the assets they occupy. These changes raise questions about what assets ought to be owned, which disposed of, and whether renting is a better alternative for the public sector. They bring about changes in asset management practices. As a result, the management of public lands has tended to become more closely aligned to management systems in the private sector.

INTRODUCTION

The vesting of the ownership or administration of substantial portions of a nation's land in the hands of the public sector is a widespread feature of many land tenure structures. The public sector is an important supplier of services, such as health care, education and defence. It needs to use land it owns or controls in order to produce them. The state often possesses land so that it can protect it, for example, for environmental or cultural reasons. How the public sector manages the land it owns or controls is likely to have important implications for the well-being of the population. Inefficient or ineffective land management can have serious adverse consequences. Public lands are important assets that, when managed well, can be of great benefit to society. This requires the use of "best practice" management methods.

However, as Zimmermann (2007) has argued, the management of government property is badly handled across the world. Public property assets are typically mismanaged and it is normal for countries to fail to utilize these assets to their full potential. For example, Kaganova, McKellar and Peterson (2006) provide a number of examples of poor use of public lands: vacancy rates of more than 30 percent of municipally owned floor-space in countries of the former Soviet Union; municipal rents at 22 percent of private rents in Kyrgyzstan; and a US$5.7 billion backlog of maintenance repairs for the US General Administration Office (which manages 10 percent of government space). A recent report by the National Audit Office into the British government's office property (NAO, 2007) concluded that "central government departments are a long way from achieving full value for money from their office estate." It estimated potential savings at between 14 and 50 percent of the current annual expenditure of UK£6 billion on office property. It found that the average space

per person was 17.1 m^2, but departments ranged between 13.3 and 21.9 m^2 per person and the median office costs per person varied between UK£2 592 and UK£12 041 per year. These examples can be multiplied many times over. Few countries in the world have not experienced similar problems. In some cases, the way that public lands have been managed may be a direct contributor to poverty and the undermining of human rights through people being dispossessed of their land by the state.

The problem of the management of state land is not a matter of poor countries failing to manage their resources well compared with richer ones. It is a universal problem, although there are some beacons of good practice. However, a number of countries have been engaged in a major revolution in the management of public lands during the past quarter of a century. They are part of the process of changing the ways in which the public sector delivers public services. While in no case can the process be said to be complete or to have been wholly successful, the changes have been substantial and generally beneficial.

There are two main drivers of change in the management of public lands, the so-called New Public Management (NPM) and the move towards accruals accounting in the public sector. They provide the intellectual underpinning of the innovative techniques for the management of state lands. Under NPM, there is a reduction in top-down controls over the delivery of services in favour of greater freedom for front-line staff to operate within the policy framework set by the government. Responsibility for achieving targets is placed on front-line staff, who have scope to determine how these are achieved, including how best to deploy their budgets and resources such as real estate. Accruals accounting systems require income to be matched with the full economic costs incurred in earning it. These include the costs of using fixed assets such as land and buildings. Costs include depreciation and amortization as well as day-to-day running costs such as energy costs and maintenance.

Organizations are expected to generate a surplus of income over costs to pay for the cost of capital tied up in them. The combination of the NPM placing budgetary obligations on front-line staff to achieve performance outcomes and accruals accounting requiring that the resources used be paid for at the full economic cost forces front-line managers to examine whether finances should be put into real estate assets or into other resources. Therefore, this brings changes to the ways in which real estate assets are managed as there is considerable pressure on managers to use them efficiently.

Being clear about the reasons why public lands are owned or occupied is an essential aspect of achieving efficient management. Much state land has come into the possession of public bodies by accident or for random reasons rather than as a result of a clear strategy. Fundamental to the efficient management of public lands is the development of a coherent and appropriate strategy. This means answering questions about what public bodies are trying to achieve and the role of public lands in doing this (see RICS, 2008). This should be part of a public body's corporate planning process. Only once a public body knows what it is trying to achieve with public lands, can it determine the best way of accessing these, whether by ownership, renting or other means. Only when the purpose of having public lands is clear, can one produce strategies about asset acquisition, disposal and replacement, and develop the policies and processes by which to achieve these. An implication of the two main drivers of change is that public lands are a means to an end and not the end in itself. The management of public land cannot stand apart from the management of other resources, such as human resources and information and communication technology, but needs to be coordinated with these to achieve the objectives of public policy.

NEW PUBLIC MANAGEMENT

The term New Public Management (or NPM) has been applied to a series of policies aimed at increasing the efficiency with which public services are provided. The aim is to reduce top-down controls over their delivery in favour of greater freedom for front-line staff to operate within the policy framework set by the elected government. It produces a shift away from central government exercising input controls over finances, premises and staffing towards it using output controls over what is actually delivered. Front-line staff are given targets that they have to achieve. They have to manage their resources, including real estate assets, in such a way as to achieve these within the budget allocated by government or the fee income generated by charges. This results in pressure to reduce the use of real estate assets in production and to increase the productivity with which they are used.

Hood (1991), who was one of the first to use the term New Public Management, argued that NPM was a fusion between the new institutional economics, with its emphasis on public choice, the relationship between principals and agents, and managerialism in the public sector. He argued that the main features of NPM are:

- hands-on professional management;
- explicit output standards and measures of performance;
- greater emphasis on output controls;
- a shift towards disaggregation of units in the public sector;
- a shift to greater competition in the public sector;
- stress on private-sector styles of management;
- stress on greater discipline and parsimony in resource use.

To these can be added a reduced role for the state with greater use of market-type mechanisms and privatization (Glor, 2001), funding and accounting systems based on the contracted purchase of defined outputs (Chapman and Duncan, 2007), and greater contestability in which public-sector bodies have to compete against the private sector or where private-sector bodies compete against one another to deliver public services or support services for these. The differences between the methods used for managing public-sector and private-sector organizations become minimal, allowing interchange of personnel and methods between the two sectors. It is no longer possible to talk about "public" management. Expertise in public administration systems may be of less importance than management expertise.

The greater autonomy enjoyed by front-line staff means that they do not have to be within a government department or local authority but may be part of an agency contracted to deliver services to a government department. Indeed, they may even work for a private company or a charitable body contracted to deliver public services. This means that they do not have to be public servants and can be paid on a different basis with different terms of employment. An implication of this is that they may receive performance-related pay and thus be incentivized to meet performance targets. They need not have the job security that public servants enjoy. In the event of failure to meet targets, they can be held accountable and lose their jobs.

The reason for the adoption of NPM is because of the belief that the public sector is not efficient. The countries that have tended to adopt NPM do not experience many of the problems found elsewhere in the public sector. Their public sectors generally behave ethically and operate in accordance with well-defined laws and regulations. These countries have very strong systems of formal control over the public sector. Appointments and promotions are made on merit. Financial and system audits are used to check on the implementation and effectiveness of controls and to root out corruption. Public-sector employees have a good total employment package of pay, pensions and working conditions. The public sector is normally able to attract qualified and skilled employees and generally does not have capacity problems.

In spite of these advantages, there are efficiency problems in the public sector. The systems used for controlling the public sector are designed to ensure that resources are used only for the purposes for which they have been allocated and that public servants operate in accordance with defined policies and procedures. Unfortunately, the systems lack mechanisms to promote efficiency. They promote the mindset that public servants must operate within the rules rather than show initiative, innovation and economy. Public money is spent on the purposes for which it has been allocated but may not be spent wisely. The problem is not with the public servants but the incentive environment in which they have to operate (Bale and Dale, 1998). They tend not to operate in a business-like way – that is, to produce the services that customers want as economically as possible. The professionals delivering the services may have colonized them so that they act as a producers' cooperative (Ackroyd, Kirkpatrick and Walker, 2007). Indeed, recipients of public services may not be regarded as customers or clients as they often have no choice and little redress against inefficiency. This is what NPM seeks to address.

New Public Management has been a feature of public-sector reform in a number of richer countries, including Australia, Canada, the Netherlands, New Zealand, Sweden, the United Kingdom and the United States of America (Glor, 2001). However, countries as diverse as Botswana, Latvia, Namibia, Nepal, Rwanda, Thailand, Turkey and the United Republic of Tanzania have also shown an interest in adopting it (Levy, 2007; Bryld, 2003; Kiragu and Matuhaba, 2006). Although the approach is given the label of NPM, there are some important differences in policy and execution between countries. For example, New Zealand has tended to use contracts between government ministers and service providers (Christiansen and Lægreid, 2001). By contrast, the United Kingdom has placed greater emphasis on citizens' charters and entitlements of individuals. Rather than relying on ministers to enforce contracts, individual citizens have been provided with means of redress if services are unsatisfactory (NAO, 2005a). Differences in approach mean that, in some respects, NPM is a convenient label under which to bring together a diverse series of changes in public administration rather than being a coherent philosophy of public management. However, at the heart of NPM is the identification of efficiency problems faced by governments.

NEW PUBLIC MANAGEMENT AND THE MANAGEMENT OF PUBLIC LANDS

The provision of real estate assets for public services involves a number of distinct processes – design, building, financing, operation and ownership. These are capable of being delivered by different bodies. Under NPM, the public sector commissions services and determines specifications. However, the delivery of a service can be by a number of different types of body. These include direct provision by the public body itself, delegation to another public body operating in a semi-autonomous fashion as a public trading company, or contracting out to a private company or charitable organization. Like large private-sector companies, the public sector is faced with questions about which parts of its processes it should deliver itself, which parts to contract with others to supply it with inputs, and which to outsource to others to supply direct to its clients.

Separation between the body that commissions public services and the contractor that supplies them is at the heart of the NPM and has particular implications for the management of real estate:

- There is a drive for increased efficiency in the use of real estate and parsimony in the allocation of resources to it as the commissioning body seeks greater output from reduced resources. The result is to generate surplus properties that can be disposed of.
- The control of real estate resources is likely to pass into the hands of front-

line service providers who are not real estate specialists, e.g. head teachers or doctors. Real estate professionals may have to justify the use of land and buildings to those who are likely to have other priorities and may be biased towards favouring expenditure on other resources, such as staff.

- Emphasis is placed upon activities rather than ownership. The means by which access to land is gained for the provision of public services is less important than the achievement of the targets for the services. Ownership is not an objective in its own right and real estate assets may be rented if this is more effective.
- Real estate is likely to be seen as a non-core activity by public-service providers and, therefore, an activity that can be contracted out.
- Performance targets are likely to be used for real estate, such as space standards, the quality of premises and periods of downtime.
- Greater customer orientation of public-service facilities is likely to mean their redesign and refurbishment to make them more user-friendly.

THE MOVE TO ACCRUALS ACCOUNTING

The move to NPM has gone hand-in-hand with a second major change in public management, the introduction of accruals accounting. Arguably, the impact of accruals accounting on the management of public lands is even greater than that of NPM. Accruals accounting is a system under which income and costs are matched so that the income earned in an accounting period is recorded together with the costs incurred in earning it. It enables companies to compute the profit (or loss) for each trading period with the costs incurred being deducted from the revenue earned as a result of their expenditure. An important aspect of accruals accounting is that revenue is treated as having been earned when invoiced rather than when it is paid. This enables advance sales and sales on credit to be allocated to the correct accounting period. Similarly, costs are treated as occurring when they are incurred and not when paid so that prepayments and sums owed to creditors are allocated to the correct trading period. An important technical problem is what to do about the costs of fixed assets, such as machinery and buildings, which are used over a number of trading periods. These must be apportioned among the time periods in which they are used. This enables their cost to be recovered so that they can be replaced at the end of their economic life. The use of accruals accounting is a requirement of International Accounting Standards and local Generally Accepted Accounting Principles (GAAP). Such accounts show whether companies are going concerns, meaning that they are able to meet all their liabilities and costs, including the costs of their fixed assets.

Traditionally, governments have not used accruals accounting for their own accounts. Instead, they have tended to use cash accounting systems. Public bodies account for the appropriations they receive. Unused appropriations typically have to be repaid. Costs are charged against the year when they are paid and not when the assets are used. The combination of costs being charged against the year in which they have to be paid rather than incurred and the inability of public bodies to either carry a surplus or a deficit forward to the next financial year results in practices such as spending sprees at the end of the financial year to use up appropriations and delaying certain payments until the new allocation is received. The result is that costs are not matched against income.

A particular problem is the cost of fixed assets. Revenue accounts are often only charged with the direct costs of using fixed assets like buildings, such as energy and security costs. They are not charged for depreciation or amortization and so no contribution is made to maintaining the capital stock. Nominal or no rent is charged for the use of the land and buildings. This means that fixed assets are often “free” goods for government bodies,

which may not pay the true economic cost of using them.

Under accruals accounting systems, public bodies compile balance sheets and account for the costs of using fixed assets such as buildings and premises. These are depreciated or amortized as wasting assets that have to be replaced at the end of their economic lives. Depreciation has not been a traditional aspect of government accounting (CIPFA, 2002). If the value of an asset has declined, there should be an impairment charge. Public bodies are expected to generate a return on their capital, including real estate assets, equal to its opportunity cost. Their liabilities include the equity owned by taxpayers. Buildings and premises are no longer "free" goods. How much of them to use and whether to own or rent them become significant issues when real estate is no longer a free good.

The income and expenditure accounts produced under accruals accounting differ significantly from those produced on a cash accounting basis (HM Treasury, 2005). They are similar to those produced by companies. Alongside accounts that reconcile expenditure to appropriations, public bodies must also produce operating cost statements or income and expenditure accounts, balance sheets and cash flow statements. These require governments to develop and adopt new public-sector accounting standards against which these accounts can be audited. Various countries use accruals accounting: New Zealand since the mid-1990s (Dow *et al.*, 2006; The Treasury, 2005); Australia for departments of state since 1994/95 and for the whole government since 1999/2000 (Conway, 2006); the United Kingdom since the 1990s, with accounts following the GAAP since 1998/99 (HM Treasury, 2005); and Canada since 2003 (McKellar, 2006). The spur to change was budgetary crises, and accruals accounting was intended to ensure that these would not be repeated. For example, in the United Kingdom, it was to cement self-imposed government expenditure rules adopted in 1997 about only borrowing over the course of an economic cycle to fund investment and the need to distinguish between borrowing for investment and borrowing for current expenditure (CIPFA–Audit Commission, 2004). However, in order to implement accruals accounting across the whole of government, the government had to produce a manual that set out government accounting standards (HM Treasury, 2005, 2007) and to create an independent financial reporting board that reports to parliament on compliance with the national GAAP.

ACCRUALS ACCOUNTING AND THE MANAGEMENT OF PUBLIC LANDS

Accruals accounting has brought about some important changes to the way in which public lands are managed:

- The maintenance of accurate records of public lands, because these are essential for compiling public-sector balance sheets.
- The valuation of real estate assets. A balance sheet requires not just a list of assets but also their values. In New Zealand and the United Kingdom, governments have adopted valuation standards, which are compliant with International Valuation Standards (The Treasury, 2007; HM Treasury, 2007).
- Charging public bodies the full economic costs of using real estate assets.
- Obliging public bodies to pay for the cost of capital tied up in real estate. In the United Kingdom, a charge of 3.5 percent in real terms is applied (HM Treasury, 2007).
- The employment of discounted cash flow investment appraisal. The target return on capital is used to determine priorities for capital investment (e.g. HM Treasury, 1997, the so-called "Green Book").
- The use of formal risk management techniques to take account of potential inaccuracy in projected cash flows in investment appraisal and how risks can be managed or shifted on to other parties (e.g. HM Treasury, 2004, the so-called "Orange Book").

- The development of performance measures for real estate assets. These are essential to ensure that users do not economize on the use of real estate assets to meet financial targets at the expenses of the quality of public services and the satisfaction of their users with these. For example in the United Kingdom, HM Prison Service is obliged to provide prison accommodation in accordance with a measurable standard, which is audited through a cell certificate checked on a daily basis.

A central question for the public sector is whether it should own property. There are few property services that the public sector cannot, in principle, purchase from the private sector. Its property needs could be met by leasing or some form of partnering arrangement with the private sector. The adoption of accruals accounting makes explicit the costs of owning real estate assets. It forces public bodies to be clear about why property should be owned. For example, the Government of Australia states that the circumstances in which property should be owned include where the yield from its benefits exceeds the opportunity cost of capital, where the property has national symbolic significance, where it is needed for national security or has a highly specialized use, and in situations of market failure (Conway, 2006).

THE CHANGING MANAGEMENT OF PUBLIC LANDS

Public bodies have real estate assets that perform different functions including:

- to deliver a direct service to the public, e.g. schools and roads;
- to support service delivery, e.g. administrative offices;
- investment properties to generate income;
- properties whose ownership is vested in a public body as the trustee or guardian, e.g. heritage buildings and reserves set aside for indigenous peoples.

The issues raised with the first two types of property are essentially matters of efficiency, and NPM and accruals accounting are central to these. The last two raise issues of values and principle.

There is a tension between the occupational and investment requirements of real estate assets (McKellar, 2006; Edington, 1997). Those front-line staff who need public lands for operational reasons desire operational autonomy to acquire and dispose of real estate as they see fit. They seek to gain access to it by whatever means they deem appropriate, whether by lease or ownership. For them, land is just another facility, like vehicles or computers, for which costs need to be minimized. They have no incentive to invest in real estate assets beyond the contribution they make to current service output. By contrast, central institutions have an ownership and portfolio perspective. Their objectives may include income, capital growth and the avoidance of having vacant properties. Income from rents and other charges is an alternative source of revenue to taxes. They may wish to invest in real estate where there are potential future benefits rather than just to secure improvements to current services.

Much of the operational property used to deliver public services is of a specialist nature for which there is no general market, e.g. schools, hospitals and prisons. It is not easily converted to another use. Their design influences how the services are provided and is an integral part of the delivery of the service itself. How the real estate assets are to be managed is, therefore, closely connected to questions about how the service itself is to be managed. The traditional model of providing public services is that the public sector should deliver them through direct management and own and manage the real estate for doing so. There are a number of alternatives to the traditional model that have implications for the way in which operational real is estate managed:

- Public sector agencies: The use of semi-autonomous public agencies to deliver public services is a feature of NPM. These function as publicly owned

trading bodies managed by boards and quasi-directors. Their income is derived from the commissioning bodies or charges on users. For example, in the United Kingdom, only 5 percent of the civil service worked for agencies in 1988 but by 2002 this had increased to 78 percent (OPSR, 2002; NAO, 2003). In 2002, there were 127 executive agencies. Agencies can also work at local government level. Agencies function within an accruals accounting framework and have to produce a return on the capital they employ. They seem to work best when given a narrow range of tasks to fulfil for which precise key performance indicators can be set.

- Outsourcing or strategic partnership arrangements: The service is delivered to citizens free at the point of consumption but is provided wholly or partly through contract with a private company.
- Private Finance Initiative (PFI): PFI projects involve the private sector providing and maintaining the infrastructure for the delivery of public services (HM Treasury, 2003). They mainly involve the construction or refurbishment of real estate assets like schools or hospitals. A private consortium finances and constructs (or refurbishes) the facility and undertakes to make it available for a period of time under specified conditions, with the public body paying an annual charge.
- Public-works or public-service concessions: The concessionaire constructs and operates a facility, such as a road or bridge, in return for receiving the fees paid by users. At the end of the contract, the facility reverts to the public sector.
- Privatization: Privatization has been used to introduce contestability in services that were once the preserve of publicly owned utilities.
- Deregulation: In some industries, governments have ceased to provide what was a public-service monopoly service. Instead, private companies compete to offer the service.

Support assets are not unique to the public sector. For example, offices can have many different types of user. The public sector can supply them but this means it will retain the risk of doing so, such as obsolescence or redundancy if the pattern of public services changes (PricewaterhouseCoopers, 2004). The public sector has an incentive to shift the risk on to the private sector. Different solutions have been tried to this problem. In Australia, non-defence government property is leased to public bodies by the Department of Finance and Administration at market prices with service standards being guaranteed by contract (Conway, 2006). In the United Kingdom, the government has used a PFI approach to sell support properties to the private sector that it then leases back (NAO, 2004, 2005b). A number of leading private companies have followed the government's lead and outsourced their own real estate in exchange for taking on contracts for long-term supply of serviced accommodation.

CONCLUSION

The combination of charging public bodies the full economic costs of real estate assets plus greater power of front-line staff over how their budgets are spent and incentives has meant that public bodies are motivated to search for the most efficient means of providing real estate assets for public services. It is tending to result in the disposal of underperforming assets, a debate about whether assets should be owned or rented, and attempts to shift risk on to the private sector. Comprehensive asset management strategies are needed that are part of a public body's strategic planning process. How universally applicable these changes are is open to debate. Hood (1991) has argued NPM assumes a culture of public service with honesty and neutrality as given. Schick (1998) has argued that these reforms depend upon internal markets and internal contracts, which in turn require robust markets and means of contract enforcement. Surely the last thing to be recommended in

a country in which governance is weak is to loosen controls over front-line staff? The analysis of requirements for good governance in land administration by FAO (2007) showed that many of the policies that can be used to enhance the quality of governance are compatible with NPM and accruals accounting. The pursuit of good governance and improved efficiency may well go together.

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ISBN 978-92-5-006300-3 ISSN 0251-1894

I0899Tri/1/08.09/2500